

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Index No. 07 CV 6268 (WP) (MDF)

- - - - - x

ROCKLAND VENDING CORP.,

Plaintiff,

- against -

ROXANNE CREEN, sued in her individual capacity; MARSHA F. RILEY, sued in her individual capacity; STEWART KIDDER, sued in his individual capacity,

Defendants.

- - - - - x

November 2, 2007

10:05 a.m.

DEPOSITION of MICHAEL FREED, taken by

Defendants, Pursuant to Federal Rule 30(b)(6),

held at 10 East Post Road, White Plains, New York,

10601, before Michael Catania, a Notary Public of

the State of New York.

1 APPEARANCES

2
 3 SUSSMAN & WATKINS
 P.O. Box 1005
 4 Goshen, New York 10924
 Attorneys for Plaintiff
 5 BY: MICHAEL SUSSMAN, ESQ.
 6
 ANDREW M. CUOMO
 7 Attorney General of the State of New York
 120 Broadway - 24th Floor
 8 New York, New York 10271
 Attorney for Defendants
 9 BY: DANIEL SCHULZE, ESQ. (DS4198)
 Assistant Attorney General

10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

[Page 2]

1 Freed
 2 this may help.
 3 MR. SCHULZE: You can show him that.
 4 Do you mind marking that?
 5 MR. SUSSMAN: Yes.
 6 MR. SCHULZE: He identified it now.
 7 Do you want me to show him this?
 8 MR. SUSSMAN: It is the same
 9 document.
 10 MR. SCHULZE: Mark an e-mail from me
 11 to Michael Sussman as Defendant Exhibit B, dated
 12 10/31/07, including the text of the Rule
 13 30(b)(6) Notice.
 14 (Exhibit D-B, E-mail, marked for
 15 identification.)
 16 Q. I show you what has been marked for
 17 identification as Defendant Exhibit B.
 18 Is that what you were referring to?
 19 A. As having seen before?
 20 Q. Yes.
 21 A. Yes.
 22 Q. The first thing in that e-mail is a
 23 text of the Notice Pursuant to Rule 30(b)(6).
 24 Do you see that?
 25 A. I don't know what Rule 30(b)(6) is.

[Page 4]

1 Freed
 2 MICHAEL FREED, called as a witness,
 3 having been first duly sworn, was
 4 examined and testified as follows:
 5 MR. SCHULZE: Mark the Notice of
 6 Deposition pursuant to Rule 30(b)(6) as
 7 Defendant Exhibit A.
 8 (Exhibit D-A, Notice, marked for
 9 identification.)
 10 EXAMINATION BY
 11 MR. SCHULZE:
 12 Q. Good morning, Mr. Freed.
 13 A. Good morning.
 14 Q. I am Dan Schulze. I represent the
 15 Defendants in this case.
 16 Do you understand that?
 17 A. Yes.
 18 Q. I am showing you what has been marked
 19 for identification as Defendant Exhibit A. This
 20 is the Notice of Deposition Pursuant to Rule
 21 30(b)(6).
 22 Have you seen that document before?
 23 A. I have not seen this particular
 24 document.
 25 MR. SUSSMAN: If you show him this,

[Page 3]

1 Freed
 2 Q. Do you see the very first language in
 3 the e-mail says, "Please take notice that
 4 pursuant to Rule 30 of the Federal Rules"? Do
 5 you see that?
 6 A. Yes.
 7 Q. And five topics are listed.
 8 Do you see that?
 9 A. Yes.
 10 Q. Do I understand that you are here
 11 testifying as to the knowledge of Rockland
 12 Vending Corporation as to the five topics?
 13 A. As to the knowledge of Rockland
 14 Vending Corporation?
 15 Q. Yes.
 16 A. Yes.
 17 Q. What did you do to prepare for this
 18 deposition?
 19 A. What did I do? Absolutely nothing.
 20 Q. Did you meet with your attorney?
 21 A. Yes. I did meet with Michael Sussman
 22 last evening.
 23 Q. How long?
 24 A. About 45 minutes.
 25 Q. Did you look at any documents?

[Page 5]

[2] (Pages 2 to 5)

1 Freed
 2 A. It was 8:30 last night. I am not
 3 sure exactly what I was looking at.
 4 Yes. I think we -- I think
 5 basically -- yes, I did. I looked over what I
 6 think was the complaint or basically the
 7 complaint. That was it.
 8 Q. Did you look at your Affidavit filed
 9 in this case?
 10 A. I think that is what it was, yes, an
 11 Affidavit.
 12 Q. Anything else?
 13 A. No. Not that I can remember.
 14 Q. Did you review any of the financial
 15 records of Rockland in preparation for this
 16 deposition?
 17 A. No.
 18 Q. Did you review any of the
 19 correspondence with documents in preparation for
 20 this deposition?
 21 A. No.
 22 Q. What is your current position?
 23 A. President of Rockland Vending
 24 Corporation.
 25 Q. How long have you been President of

[Page 6]

1 Freed
 2 Q. How many contracts do you have with
 3 the Federal Government?
 4 A. One.
 5 Q. What is that for?
 6 A. The Federal Courthouse in White
 7 Plains.
 8 Q. Did you have anything you wanted to
 9 add?
 10 A. Yes -- no, I thought about another
 11 contract that might have been federal, but it is
 12 not. It is state.
 13 Q. What was that?
 14 A. It is a state police -- actually -- I
 15 am sorry. It is part of the same contract.
 16 The Federal Courthouse was packaged
 17 in with another facility that I believe is a
 18 state facility.
 19 Q. Do you have any contacts with the
 20 Federal Judges in the White Plains courthouse?
 21 A. No.
 22 Q. Does anyone from your company deal
 23 with the Federal Judges in connection with the
 24 contracts?
 25 A. No.

[Page 8]

1 Freed
 2 Rockland?
 3 A. 33 years.
 4 Q. What does Rockland Vending
 5 Corporation do?
 6 A. Provide vending machine services to
 7 clients.
 8 Q. Both private and government?
 9 A. Yes.
 10 Q. Who do you currently have contracts
 11 with?
 12 A. Private accounts such as -- anything
 13 from -- private accounts, as well as government
 14 contracts.
 15 Q. Do you currently have government
 16 contracts?
 17 A. We currently do have government
 18 contracts, yes.
 19 Q. Who with?
 20 A. The Federal Government, the State of
 21 New York. We continued to have one, two with
 22 one so -- two contracts with the state.
 23 And we also have -- we have held in
 24 the past county contracts, federal, state and
 25 local government contracts.

[Page 7]

1 Freed
 2 Q. What are your contracts with New York
 3 State?
 4 A. New York State Correctional
 5 Facilities. We had 11 New York State
 6 Correctional Facilities, and I don't know -- I
 7 can't recall whether we have any other state
 8 contracts.
 9 I don't believe we do right now. We
 10 may have in the past. It has been 32 years.
 11 Q. Which of the contracts are still in
 12 effect?
 13 A. Fishkill Correctional Facility, which
 14 actually is bidding their vending with a
 15 mandatory site visit today. Fishkill and Green
 16 correctional facility.
 17 Q. Do you have any contracts with New
 18 York City?
 19 A. We had -- we have had contracts with
 20 New York City.
 21 Q. Do you have any currently?
 22 A. No.
 23 Q. How many employees does Rockland have
 24 currently?
 25 A. Currently?

[Page 9]

[3] (Pages 6 to 9)

<p>1 Freed</p> <p>2 Q. Yes.</p> <p>3 A. I don't know exactly, but I would say</p> <p>4 probably -- the number I am thinking of is 13.</p> <p>5 Q. Do you employ drivers at Rockland?</p> <p>6 A. Yes.</p> <p>7 Q. The drivers are employees of Rockland</p> <p>8 and are not with the contractors; is that</p> <p>9 correct?</p> <p>10 A. Yes. They are employees of Rockland</p> <p>11 Vending.</p> <p>12 Q. Is Mr. Gallagher currently an</p> <p>13 employee of Rockland?</p> <p>14 A. Yes.</p> <p>15 Q. How many drivers does Rockland</p> <p>16 employ?</p> <p>17 A. Currently five.</p> <p>18 Q. Earlier this year, did Rockland</p> <p>19 employ more than five drivers?</p> <p>20 A. Yes.</p> <p>21 Q. How many drivers did it employ in</p> <p>22 January of this year?</p> <p>23 A. Okay. Again, I believe it was ten.</p> <p>24 It could have been 11, and it could have been</p> <p>25 nine. But I believe it was ten.</p>	<p>1 Freed</p> <p>2 And the last one was actually four</p> <p>3 years. I believe it was nine years ago. I</p> <p>4 believe it was nine years ago.</p> <p>5 Q. You understand that you are here</p> <p>6 testifying on behalf of Rockland?</p> <p>7 A. Yes. Where I don't have the</p> <p>8 knowledge, I am trying to express that, of what</p> <p>9 I am not exactly sure.</p> <p>10 Q. What was the first contract for?</p> <p>11 A. Vending machine services.</p> <p>12 Q. At which facility?</p> <p>13 A. Fishkill Correctional Facility.</p> <p>14 Q. Any other?</p> <p>15 A. That was the first one. They are bid</p> <p>16 individually.</p> <p>17 Q. How long did that contract last?</p> <p>18 A. That was a four-year contract.</p> <p>19 Q. After that contract expired, did you</p> <p>20 rebid?</p> <p>21 A. Yes.</p> <p>22 Q. What year was that?</p> <p>23 A. It was a two-year contract with two</p> <p>24 options for one year. It was four years</p> <p>25 after -- if it was nine ears -- it was five</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[Page 10]

[Page 12]

<p>1 Freed</p> <p>2 Q. How about in May of this year?</p> <p>3 A. I believe in May it was also -- in</p> <p>4 the beginning of May it was also ten.</p> <p>5 There has been no change between</p> <p>6 those times.</p> <p>7 Q. When did Rockland first enter into a</p> <p>8 contract with the Department of Correctional</p> <p>9 Services?</p> <p>10 A. I --</p> <p>11 Q. New York State Department of</p> <p>12 Correctional Services?</p> <p>13 A. Right. I believe eight years ago.</p> <p>14 MR. SUSSMAN: Do you want to call it</p> <p>15 DOCS rather than New York State Department of</p> <p>16 Correctional Services every time?</p> <p>17 MR. SCHULZE: Yes.</p> <p>18 Q. You will understand that?</p> <p>19 A. Yes.</p> <p>20 Q. Your first contract with DOCS was</p> <p>21 eight years ago?</p> <p>22 A. Again, without reviewing my boards,</p> <p>23 it is my best recollection that it was eight</p> <p>24 years ago. The way I am determining that is</p> <p>25 that this was a five-year contract.</p>	<p>1 Freed</p> <p>2 years ago.</p> <p>3 Q. Is that contract currently in effect?</p> <p>4 A. Yes.</p> <p>5 Q. When you bid for that contract, did</p> <p>6 you bid for any other correctional facility</p> <p>7 contract?</p> <p>8 MR. SUSSMAN: You mean the one five</p> <p>9 years ago?</p> <p>10 MR. SCHULZE: Yes.</p> <p>11 A. At that time, no, it bid one at a</p> <p>12 time.</p> <p>13 Q. At the beginning of 2007, how many</p> <p>14 New York State correctional facilities did you</p> <p>15 have contracts with?</p> <p>16 MR. SUSSMAN: You mean January 1, in</p> <p>17 the beginning? So that there is no ambiguity.</p> <p>18 MR. SCHULZE: Yes. I am trying to</p> <p>19 get a framework here.</p> <p>20 A. Okay. Give me a second. Ten. I</p> <p>21 believe it was ten.</p> <p>22 Q. Was one of the facilities that you</p> <p>23 had a contract with the Shawangunk Correctional</p> <p>24 Facility?</p> <p>25 A. Yes.</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[Page 11]

[Page 13]

[4] (Pages 10 to 13)

<p>1 Freed</p> <p>2 Q. When did that contract start?</p> <p>3 A. I am not sure.</p> <p>4 Q. Was it in effect in 2006?</p> <p>5 A. Yes.</p> <p>6 Q. Did the contract require you to pay</p> <p>7 commissions and a leasing fee for the space?</p> <p>8 A. Yes.</p> <p>9 Q. Were you ever late with payments for</p> <p>10 those commissions and lease fees?</p> <p>11 A. Yes.</p> <p>12 Q. How often?</p> <p>13 MR. SUSSMAN: You are talking about</p> <p>14 Shawangunk?</p> <p>15 MR. SCHULZE: Yes.</p> <p>16 A. At times we were late on commissions.</p> <p>17 How often -- at times we were current. I am not</p> <p>18 sure how to answer that question properly. We</p> <p>19 were late from time to time.</p> <p>20 Q. Were there times where you were as</p> <p>21 much as three months late in paying commissions?</p> <p>22 A. Yes.</p> <p>23 Q. Why was that?</p> <p>24 A. Financial -- we were just having --</p> <p>25 we were having trouble remaining profitable.</p>	<p>1 Freed</p> <p>2 A. We were contacted by the business</p> <p>3 officer at the facility and we were also</p> <p>4 contacted by Mr. Kidder.</p> <p>5 Q. Who is the business person at the</p> <p>6 facility?</p> <p>7 A. Roxanne Creen.</p> <p>8 Q. Did she contact you personally?</p> <p>9 A. Yes.</p> <p>10 Q. How many times?</p> <p>11 A. Several.</p> <p>12 Q. By telephone?</p> <p>13 A. I believe I received e-mail</p> <p>14 correspondence. And I might have also received</p> <p>15 a letter.</p> <p>16 And I don't recall any telephone</p> <p>17 calls, but it could have happened.</p> <p>18 Q. When is the first time she contacted</p> <p>19 you regarding late payments at Shawangunk?</p> <p>20 A. I'm sorry. I don't recall that.</p> <p>21 Q. Was it before 2006?</p> <p>22 A. That would have been 2005. No. I</p> <p>23 don't believe so. I don't believe so because I</p> <p>24 don't believe we were late prior to that.</p> <p>25 Q. At Shawangunk specifically?</p>
[Page 14]	[Page 16]

<p>1 Freed</p> <p>2 Q. When were you having trouble</p> <p>3 remaining profitable?</p> <p>4 A. At the facility I would say the</p> <p>5 last -- within the last year.</p> <p>6 Q. From when to when?</p> <p>7 A. The last year we were involved in the</p> <p>8 contract. And prior to that we were not late on</p> <p>9 commissions.</p> <p>10 Q. Specifically what time period?</p> <p>11 A. I don't have that information.</p> <p>12 Q. When you say last year, do you mean</p> <p>13 last year from today?</p> <p>14 A. No. I would say the final year we</p> <p>15 were at the facility we were running late on</p> <p>16 commissions.</p> <p>17 So if we pulled out -- I think the</p> <p>18 contract was over in May. So I would say the</p> <p>19 last year, May to May, approximately.</p> <p>20 Q. May 2006, May 2007; correct?</p> <p>21 A. Approximately.</p> <p>22 Q. Were you contacted by anyone in</p> <p>23 regards to the late payments?</p> <p>24 A. Yes.</p> <p>25 Q. Who?</p>	<p>1 Freed</p> <p>2 A. That is correct.</p> <p>3 Q. How often were you contacted by Mr.</p> <p>4 Kidder?</p> <p>5 A. Once.</p> <p>6 Q. Was that a letter in November 2006?</p> <p>7 A. That is correct.</p> <p>8 Q. What did that letter say?</p> <p>9 MR. SUSSMAN: Objection.</p> <p>10 You can answer.</p> <p>11 A. The letter basically said that we</p> <p>12 needed to catch up on all commissions at all</p> <p>13 facilities.</p> <p>14 MR. SCHULZE: Mark as Defendant</p> <p>15 Exhibit C a letter from Stewart Kidder to</p> <p>16 Michael Freed dated November 9, 2006.</p> <p>17 (Exhibit D-C, Letter, 11/9/06, marked</p> <p>18 for identification.)</p> <p>19 Q. I hand you what has been marked for</p> <p>20 identification as Defendant Exhibit C marked for</p> <p>21 identification.</p> <p>22 Is that the letter to which you are</p> <p>23 referring?</p> <p>24 MR. SUSSMAN: Are you asking him if</p> <p>25 he received this copy or --</p>
[Page 15]	[Page 17]

[5] (Pages 14 to 17)

<p>1 Freed 2 MR. SCHULZE: The question is, is 3 that the letter to which he is referring in his 4 testimony. 5 A. Yes. 6 Q. Your counsel is pointing to 7 something. Is there something you want to add? 8 A. No. Actually, the bcc, I am not sure 9 if those correctional facilities were missed on 10 my letter. 11 Q. When you received this letter, you 12 did not know whether it had been copied to the 13 correctional facilities? 14 A. When I got the letter, I did not know 15 if it was copied to the other correctional 16 facility. 17 Q. You emphasize the words "got that 18 letter." 19 Did you later become aware of the 20 copies to other correctional facilities? 21 A. Yes. 22 Q. How did you become aware of that? 23 A. One of the stewards at one of the 24 other facilities specifically called me and told 25 me that we know what happened at -- at this [Page 18]</p>	<p>1 Freed 2 Q. What did you understand that comment 3 about Shawangunk to be referring to? 4 A. That our contract at Lincoln was 5 being cancelled. 6 Q. You were told that in 2006? 7 A. It was shortly after the letter was 8 received. 9 Q. Did this call take place with you 10 personally? 11 A. Yes. 12 Q. What did you say when you were told 13 that? 14 A. I don't recall. I was taken aback. 15 Q. Taken aback? 16 A. Yes, I was shocked. 17 Q. At that time did you believe 18 Shawangunk was cancelling their contract? 19 A. No. 20 Q. At that time did Lincoln in fact 21 cancel their contract? 22 A. No. 23 MR. SCHULZE: Off the record. 24 (Discussion off the record.) 25 Q. In Mr. Kidder's letter of November [Page 20]</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>1 Freed 2 facility. 3 Q. What facility? 4 A. That was Lincoln Correctional 5 Facility. 6 Q. This letter does not say anything 7 that happened at Lincoln Correctional Facility? 8 A. No. 9 Q. Who was the steward you spoke to? 10 A. Ms. Mason. 11 Q. Did Miss Mason say that she had 12 received this letter that is marked for 13 identification as Defendant Exhibit C? 14 A. No. 15 Q. What do you recall that you believe 16 led you to believe she received this letter? 17 A. She told me -- I believe she 18 explained to me that we all know what happened 19 at Shawangunk and -- that she was taking action 20 to make sure that the same thing happened at 21 Lincoln. 22 Q. What day was that? 23 A. I don't recall. 24 Q. What month was it? 25 A. It was shortly after this letter. [Page 19]</p>	<p>1 Freed 2 9 -- 3 A. Excuse me. Can you give me a second? 4 MR. SCHULZE: Note the witness is 5 conferring with his counsel. 6 A. I am sorry. 7 Q. In the letter of November 9, 2006, 8 did Mr. Kidder remind you that commissions had 9 to be paid on time? 10 MR. SUSSMAN: Objection. The letter 11 speaks for itself. 12 You can answer. 13 A. Yes. 14 Q. Is that what you understood? 15 A. Yes. 16 Q. Did you understand that he was 17 telling you that if you did not pay the 18 commissions on time that you could be 19 disqualified from the State contract? 20 A. Yes. 21 MR. SCHULZE: Mark as Defendant 22 Exhibit D a one-page letter dated November 13, 23 2006 from Michael Freed to Stewart Kidder. 24 (Exhibit D-D, Letter, 11/13/06, 25 marked for identification.) [Page 21]</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[6] (Pages 18 to 21)

<p>1 Freed 2 Q. I hand you what has been marked for 3 identification as Defendant Exhibit D. Leaving 4 aside the fax line at the top and the stamp on 5 that, do you recognize this document? 6 A. Yes. 7 Q. Is that your signature at the bottom? 8 A. Yes. 9 Q. What is this document? 10 A. It is a response to Mr. Kidder's 11 letter. 12 Q. In this letter you state, "All 13 commission to all of your facilities are now 14 paid in full as of this date." 15 Was that true? 16 A. I am sorry. Yes. I believe it was. 17 I believe that it was when I wrote this letter. 18 I am not absolutely sure. 19 Q. Did you check that before you wrote 20 the letter? 21 A. I would have -- I am not sure. I 22 would have thought that I would. 23 Q. You don't remember doing so? 24 A. No. Do I remember specifically going 25 in and talking to my bookkeeper at the time?</p>	<p>1 Freed 2 Mr. Kidder? 3 A. I don't recall having any further 4 contact with Mr. Kidder. 5 Q. Before you received his letter of 6 November 2006, did you have any contact with Mr. 7 Kidder? 8 A. Before I received the letter, yes. 9 Q. When did you have contact with him? 10 MR. SUSSMAN: The letter of November 11 9. 12 MR. SCHULZE: Yes. I just said 13 November. That's fine. 14 A. Numerous occasions. 15 Q. What about? 16 A. Any specific issues we may have had 17 with any of the facilities that were not 18 addressed by the facility, at times I would 19 contact Mr. Kidder or his associate. 20 Q. Prior to this November 2006 letter, 21 when was the last time you spoke to Mr. Kidder? 22 A. I don't recall. 23 Q. Is it fair to say that you worked out 24 most problems with the facilities directly under 25 these contracts?</p>
<p>[Page 22]</p>	<p>[Page 24]</p>

<p>1 Freed 2 No. I don't recall that. 3 Q. Who is your bookkeeper? 4 A. At that time? 5 Q. Yes. 6 A. Her name is Gail Goodson. 7 Q. Is your wife employed by Rockland 8 Vending Corporation? 9 A. Yes, she is. 10 Q. What is her position? 11 A. She is the Vice President. 12 Q. After you wrote this letter to Mr. 13 Kidder, did you have any further contact with 14 him? 15 MR. SUSSMAN: What time period are 16 you speaking about; ever? 17 MR. SCHULZE: Ever. 18 A. Yes. 19 Q. When? 20 A. On the day of the incident at 21 Shawangunk. 22 Q. You are referring to May 9, 2007? 23 A. Correct. 24 Q. Between the date of this letter and 25 May 9, 2007 you did not have any contact with</p>	<p>1 Freed 2 A. Wherever possible. 3 Q. Was the steward at each facility the 4 person you would normally contact? 5 A. In each facility it was slightly 6 different. Some of the stewards were delegated 7 to someone below them. 8 Q. Was Roxanne Creen your contact at 9 Shawangunk? 10 A. No, not normally. 11 Q. Who was your normal contact? 12 A. A woman by the name of Margie, and 13 she worked in the business office. 14 Q. After you wrote this letter in 15 November 2006, did you fall delinquent in 16 payment to Shawangunk again? 17 A. Yes. 18 Q. When was that? 19 A. I don't recall. 20 Q. When was the last time Rockland made 21 a commission payment on the Shawangunk contract? 22 A. I don't recall. 23 Q. Did you review the records in 24 preparation for this deposition? 25 A. No.</p>
<p>[Page 23]</p>	<p>[Page 25]</p>

1 Freed
 2 Q. On the date of May 9, 2007, how
 3 delinquent were you on the Shawangunk contract?
 4 A. I am sorry. I don't recall. I don't
 5 have that.
 6 Q. Had you been contacted at that point
 7 by Roxanne Creen about the delinquencies.
 8 MR. SUSSMAN: Between the November
 9 and May period?
 10 MR. SCHULZE: Yes, that's fine. I
 11 said before May 9.
 12 A. Yes. I believe so, yes.
 13 MR. SUSSMAN: Between November and
 14 May, you believe you were contacted?
 15 THE WITNESS: Yes. I believe so.
 16 Q. How many times?
 17 A. I don't know.
 18 Q. What did she say to you when she
 19 contacted you?
 20 A. As I recall, they were threatening in
 21 nature, that we had better pay the commissions.
 22 And when I -- just that we had better
 23 pay the commissions.
 24 Q. When you say threatening in nature,
 25 what do you mean?

[Page 26]

1 Freed
 2 you paid a commission on that contract was;
 3 correct?
 4 A. I do not.
 5 Q. You don't recall exactly how much
 6 Rockland was behind in its payments on May 9,
 7 2007; is that correct?
 8 A. Correct.
 9 Q. Is it fair to say Rockland was at
 10 least several months behind at that point?
 11 A. It is possible.
 12 Q. Who would know?
 13 A. Going back to May, I would say either
 14 my wife or the bookkeeper at the time.
 15 Q. Who was the bookkeeper at the time?
 16 A. Gail Goodson.
 17 Q. Did your wife keep the books?
 18 A. The bookkeeper would keep the books.
 19 My wife is not a bookkeeper.
 20 Q. Did you review the complaint in this
 21 action before it was filed?
 22 A. Yes.
 23 Q. In that complaint, does it state that
 24 Rockland was delinquent in payment on May 9,
 25 2007.

[Page 28]

1 Freed
 2 A. They were very abrupt -- threatening
 3 is the wrong word. They were very abrupt and
 4 pay us our commission.
 5 Q. What does that mean?
 6 A. That's what she would say. Pay the
 7 commissions now. Pay the commissions.
 8 Q. Were these written communications or
 9 oral?
 10 A. I had received some e-mails from her.
 11 Q. Did you respond to any of those
 12 e-mails?
 13 A. I did, I believe. I don't recall
 14 specifically. But I think I would have
 15 responded to e-mails.
 16 Q. What did you say?
 17 A. I am sorry. I don't recall.
 18 Q. Did you pay?
 19 A. We would have -- I don't recall. I
 20 don't recall specifically an e-mail that I
 21 responded to about paying a commission.
 22 I know that we were behind. But we
 23 did pay commissions to try to catch up. We were
 24 trying to catch up.
 25 Q. You don't recall when the last time

[Page 27]

1 Freed
 2 MR. SUSSMAN: Objection to form.
 3 You can answer.
 4 A. I don't recall.
 5 Q. Is it fair to say that Rockland was
 6 delinquent in its contract on May 9, 2007?
 7 MR. SUSSMAN: Objection.
 8 A. Yes. I believe so.
 9 Q. But you are not sure about how much?
 10 A. That is correct. How many months, I
 11 don't know. It is paid monthly.
 12 Q. Did you go to Shawangunk Correctional
 13 Facility on May 9, 2007?
 14 A. No. May 9 was the day that it
 15 happened. I want to make sure that I have the
 16 dates correct. No.
 17 Q. That's the date you allege in your
 18 complaint, May 9, 2007?
 19 A. That is correct. It's not --
 20 Q. You don't have personal knowledge of
 21 what happened at Shawangunk on that date; is
 22 that correct?
 23 A. Yes, I do. I have my employee's
 24 statement to me. That's by personal knowledge.
 25 I am not sure what the definition of

[Page 29]

[8] (Pages 26 to 29)

<p>1 Freed 2 personal knowledge is. My employee told me 3 exactly what happened. 4 Q. You have personal knowledge of what 5 your employee told you what happened, but you 6 don't have personal knowledge if what he told 7 you was true; is that correct? 8 A. Correct. 9 Q. What time does Rockland normally open 10 for business? 11 A. Five o'clock in the morning. That's 12 what time my drivers report. 13 Q. Who is present when your drivers 14 report? 15 A. A route supervisor opens the building 16 so that the drivers can come in and then -- a 17 route supervisor. 18 Q. Does Rockland have a switchboard? 19 A. We have a receptionist, yes. 20 Q. What time does the receptionist start 21 work? 22 MR. SUSSMAN: You are talking about 23 in May? 24 MR. SCHULZE: I am talking in 25 general. I will get to the specific date that</p>	<p>1 Freed 2 A. I did not arrive at work that day. 3 Q. Did your wife go to work that day? 4 A. Yes. 5 Q. Do you know what time she arrived at 6 work? 7 A. I do not. 8 Q. Was she with you at all that day? 9 A. No. 10 Q. Where were you that day? 11 A. I was in Maryland. 12 Q. Who was the first person at Rockland 13 Vending who learned of what had happened to Mr. 14 Gallagher on May 9, 2007? 15 MR. SUSSMAN: Objection. 16 You can answer if you know. 17 A. I don't know. 18 Q. Do you understand that you are here 19 testifying on behalf of Rockland Vending 20 Corporation? 21 A. Oh, absolutely. 22 Q. But you don't know who was contacted? 23 A. Who was the first person to answer 24 the telephone when Mr. Gallagher called? I 25 don't know.</p>
[Page 30]	[Page 32]

<p>1 Freed 2 we are talking about, too. 3 MR. SUSSMAN: Okay. 4 A. Our receptionist reports, I believe, 5 at 8:30 in the morning. 6 Q. Who is your receptionist? 7 A. Right now it is Diane. And I don't 8 know her last name. 9 Q. Who was it in May 2007? 10 A. I believe it was Diane. I believe it 11 was Diane. 12 Q. Prior to Diane reporting to work, 13 what happens if someone calls Rockland? 14 A. It goes to a voicemail system. 15 Q. Who can access that voicemail system? 16 A. Diane, my wife and -- if they leave 17 it in the general mailbox, it will go to Diane; 18 or my wife would check the voicemail in the 19 morning. Unless someone sends a message into a 20 specific voice mail. 21 Q. Do you know what time Diane was at 22 work on May 9, 2007? 23 A. I do not. 24 Q. What time did you arrive at work on 25 May 9, 2007?</p>	<p>1 Freed 2 Q. When did Mr. Gallagher call? 3 A. Sometime during the day. I don't 4 recall the exact time. 5 Q. Is there any telephone record of 6 this? 7 A. I guess if you are asking if we keep 8 a log of telephone calls that come in, no, no. 9 Q. Besides a log of telephone calls, is 10 there any other type of record with respect to 11 calls? 12 A. When it ultimately reached me, I 13 started making notes. 14 Q. Who did Mr. Gallagher speak to? 15 A. He spoke to my wife. 16 Q. Do you know what time? 17 A. I don't. 18 Q. Is there any way that you can 19 estimate the time? 20 A. No. I don't recall. It was sometime 21 during the work day. 22 I just don't recall what time it was. 23 You know what? I seem to believe it was right 24 about lunchtime. But I don't have any specific 25 way to anchor that.</p>
[Page 31]	[Page 33]

1 Freed
 2 Q. Why do you think it was possibly
 3 around lunchtime?
 4 A. Because I was going for lunch. I
 5 know exactly where I was. I was stopped in a
 6 shopping center getting ready to go into Dunkin'
 7 Donuts and grab a bagel.
 8 I really -- actually, to answer your
 9 question, I don't recall what time it was.
 10 Guessing is not something that I should be doing
 11 right here. And that was a guess.
 12 Q. I don't want a guess. I would like
 13 to have a fair estimate if you have one.
 14 A. I don't.
 15 Q. What did Mr. Gallagher say to your
 16 wife?
 17 A. He had told her that -- this is
 18 secondhand. Whatever I tell you now would be --
 19 if you are asking me specifically what he told
 20 my wife, I don't know.
 21 Q. Is your wife an employee of Rockland?
 22 A. Yes.
 23 Q. What did he say to your wife?
 24 A. I don't know. I was not there.
 25 Q. What did your wife say to him?

[Page 34]

1 Freed
 2 I didn't understand what she was trying to tell
 3 me.
 4 But she told me that he had been
 5 locked in a room, and they took his money and
 6 he -- he was locked in a room and they took his
 7 money.
 8 Q. When you say "he," did she say who he
 9 was?
 10 A. Mr. Gallagher, Ken.
 11 Q. When you say his money, what did that
 12 refer to?
 13 A. The money in the vending machines.
 14 Q. That he was there to pick up?
 15 A. Not just money that he was -- yes,
 16 I'm sorry. Yes. Yes.
 17 Q. How long did your call last with your
 18 wife?
 19 A. I don't recall.
 20 Q. Did your wife receive a call from
 21 Roxanne Cren that day?
 22 A. I don't know.
 23 Q. Did you ask her?
 24 A. I don't recall if she had --
 25 throughout that whole day period you are saying?

[Page 36]

1 Freed
 2 A. Again, I don't know.
 3 Q. Did you speak to Mr. Gallagher that
 4 day?
 5 A. Yes.
 6 Q. When did you speak to him?
 7 A. After the telephone call that he made
 8 to my wife, and my wife's telephone call to me,
 9 I then contacted Mr. Gallagher on his cellular
 10 telephone.
 11 Q. Your wife contacted you after she
 12 spoke to Mr. Gallagher; is that correct?
 13 A. That is correct.
 14 Q. What did she say to you?
 15 A. She told me that one of our employees
 16 had been in prison in a facility against his
 17 will, and I was in --
 18 MR. SUSSMAN: He asked you what she
 19 said to you. That's what she said to you?
 20 THE WITNESS: Yes.
 21 A. She said that he has been in prison
 22 against his will. He had been held.
 23 Q. Did she explain?
 24 A. Yes. That was basically -- I think I
 25 asked her three times to repeat herself because

[Page 35]

1 Freed
 2 Q. Yes.
 3 A. I don't know.
 4 Q. Did your wife receive a call from
 5 Roxanne Cren before she talked to Mr.
 6 Gallagher?
 7 A. No.
 8 MR. SUSSMAN: When who talked to
 9 Gallagher.
 10 MR. SCHULZE: The wife.
 11 A. No.
 12 Q. How do you know that?
 13 A. Because we had no indication at all
 14 this was going to happen until it occurred. We
 15 had no communications with Shawangunk that day
 16 until this occurred.
 17 Q. When you say until this occurred,
 18 what are you referring to?
 19 A. Until we received a call from Ken
 20 Gallagher saying he had just gotten out of the
 21 facility.
 22 Q. Did anyone at Rockland receive a call
 23 from Roxanne Cren shortly after the call from
 24 Mr. Gallagher?
 25 A. I don't believe so.

[Page 37]

[10] (Pages 34 to 37)

<p>1 Freed</p> <p>2 Q. Did you ask your wife if she received</p> <p>3 a call from Roxanne Creen that day?</p> <p>4 A. I don't recall.</p> <p>5 Q. You don't recall whether you asked</p> <p>6 her?</p> <p>7 A. I don't recall whether I asked her.</p> <p>8 My recollection -- my best recollection is that</p> <p>9 we did not.</p> <p>10 Q. After you spoke to your wife, you</p> <p>11 called Mr. Gallagher; is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. About what time was that?</p> <p>14 A. I don't recall.</p> <p>15 Q. Did you reach him?</p> <p>16 A. I believe I did.</p> <p>17 Q. Did he say where he was?</p> <p>18 A. I don't recall.</p> <p>19 Q. Did you ask him where he was?</p> <p>20 A. I believe at that point he had left</p> <p>21 the facility and he was on the way back to our</p> <p>22 office.</p> <p>23 Q. What did he --</p> <p>24 A. That's my recollection.</p> <p>25 Q. In the call, what did he say to you</p>	<p>1 Freed</p> <p>2 A. It was the visiting room.</p> <p>3 Q. Did he describe how he was being</p> <p>4 held?</p> <p>5 MR. SUSSMAN: Objection to form. I</p> <p>6 am not clear what you mean by the question how</p> <p>7 he was being held.</p> <p>8 Q. You can answer.</p> <p>9 A. The door was locked and he was not</p> <p>10 allowed to leave.</p> <p>11 Q. Did he ask to leave?</p> <p>12 A. Yes.</p> <p>13 Q. He told you that?</p> <p>14 A. Specifically, yes.</p> <p>15 Q. Did he replenish the machines while</p> <p>16 he was there?</p> <p>17 A. I don't know.</p> <p>18 Q. Did he say whether he replenished the</p> <p>19 machines in this call?</p> <p>20 A. I don't recall.</p> <p>21 Q. Did Mr. Gallagher ask you to do</p> <p>22 anything in this call?</p> <p>23 A. No. I don't recall. I don't think</p> <p>24 so.</p> <p>25 Q. What was his voice like?</p>
[Page 38]	[Page 40]

<p>1 Freed</p> <p>2 and what did you say to him?</p> <p>3 A. I was -- I asked him to repeat what</p> <p>4 had occurred, and he did.</p> <p>5 Q. What specifically did he say?</p> <p>6 A. That he was held at the facility. He</p> <p>7 was not allowed to leave. He was not allowed to</p> <p>8 call our office.</p> <p>9 And then after approximately one</p> <p>10 hour, he gave them all the money, and they gave</p> <p>11 him a receipt and he left the facility.</p> <p>12 Q. Are those the specific words he used?</p> <p>13 A. No.</p> <p>14 Q. Tell me as much as you can about the</p> <p>15 specific words he used.</p> <p>16 A. I don't recall specifically. I</p> <p>17 recall that he was shaken up.</p> <p>18 Q. Did he mention Roxanne Creen?</p> <p>19 A. Yes.</p> <p>20 Q. What did he say about her?</p> <p>21 A. He said that her and two -- he said</p> <p>22 that she was involved -- that she and two of the</p> <p>23 employees of Shawangunk were the ones that held</p> <p>24 him in that room.</p> <p>25 Q. Room?</p>	<p>1 Freed</p> <p>2 A. He was shook up.</p> <p>3 Q. How could you tell?</p> <p>4 A. Just the sound of his voice.</p> <p>5 Q. Describe it.</p> <p>6 A. I think when you worked with someone</p> <p>7 for a time and talk to them on a regular basis,</p> <p>8 and that person is upset, you can tell that from</p> <p>9 his voice.</p> <p>10 I don't know how to describe that.</p> <p>11 He was not crying. He was just upset.</p> <p>12 Q. But you cannot describe the tone of</p> <p>13 his voice at all?</p> <p>14 A. I don't know how to. No.</p> <p>15 I remember that he sounded upset but.</p> <p>16 Specifically how that -- how he sounded I don't</p> <p>17 recall. I don't know if I can describe it. He</p> <p>18 didn't sound normal.</p> <p>19 Q. What did you do after you made the</p> <p>20 call to Mr. Gallagher?</p> <p>21 A. I called Mr. Kidder.</p> <p>22 Q. What time was that?</p> <p>23 A. Right after I spoke to Mr. Gallagher.</p> <p>24 Q. Did you reach him?</p> <p>25 A. Yes.</p>
[Page 39]	[Page 41]

[11] (Pages 38 to 41)

<p>1 Freed 2 Q. What did you say? 3 A. I was -- I told him what happened at 4 Shawangunk. 5 Q. Specifically what did you say? 6 A. I said that one of our -- I told him 7 what happened, that one -- I am not going to 8 quote because it is eight months ago -- but I 9 told him that one of our employees was just held 10 against his will at Shawangunk Correctional 11 Facility for an hour, and was told that they had 12 to give the money, all of the money in the 13 machines and empty the machines and give them 14 the money.</p> <p>15 MR. SUSSMAN: When he is asking you 16 to recall, give him the sum and substance. If 17 you don't remember the exact words, give him the 18 sum and substance of what you do remember.</p> <p>19 Obviously, if you remember, then tell 20 him exactly. You can give him the sum and 21 substance if you don't remember.</p> <p>22 Q. What did he say to you? 23 A. He was aware of it. 24 Q. Meaning what? 25 A. He knew about it. He knew that it</p>	<p>1 Freed 2 the law to do that. 3 Q. Did you explain that? 4 A. I believe I did tell him. 5 Q. Did you explain what you meant by 6 that? 7 A. Yes. 8 Q. What did you say? 9 A. I told him that it was grand larceny 10 and extortion. And the sum and substance of 11 what I said is that it was against the law. I 12 believe I did mention those words. 13 Q. What did he say in response to that? 14 A. He told me that she was advised by an 15 attorney in Albany to take the action that she 16 did, and that he gave me the name of the 17 attorney in Albany if I wanted to contact him. 18 Q. What was the name? 19 A. I don't recall. I do have -- I don't 20 recall. 21 Q. Does the name George Glassanos ring a 22 bell? 23 A. It does not ring a bell. 24 Q. Did you contact that attorney? 25 A. No.</p>
[Page 42]	[Page 44]

<p>1 Freed 2 was going to occur and he agreed with it. I 3 remember this -- 4 Q. What did he say? 5 A. He said I know. I know that 6 happened. And I remember I said I was -- I said 7 you knew that occurred? I remember repeating 8 myself like twice. You knew that occurred? I 9 do remember that. 10 He was very specific that he did know 11 that was going to occur and -- 12 Q. What did you understand that to refer 13 to? 14 A. He knew they were going to hold my 15 employee in that facility and take his money. 16 Q. Take his money meaning what? 17 A. Take the company's funds. 18 Q. Take the money out of the vending 19 machine? 20 A. Correct. 21 Q. What did you say? 22 MR. SUSSMAN: Beyond what you already 23 told him. In the flow of the conversation, was 24 anything said next? 25 A. I believe I told him it was against</p>	<p>1 Freed 2 Q. Why not? 3 A. Because I didn't think whatever he 4 had to say was relevant. 5 Q. What do you mean? 6 A. I had already spoken to a close 7 friend of mine who is an attorney, and he told 8 me -- 9 MR. SUSSMAN: You don't have to go 10 into that. 11 A. I had spoken to an attorney. And I 12 didn't agree with that assessment, and there was 13 no point in talking to Mr. Kidder. 14 Q. Who was the attorney? 15 A. Howard Kave. 16 MR. SCHULZE: Are you asserting the 17 communications were privileged? 18 MR. SUSSMAN: Yes. This is an 19 attorney that he has used in consulting on a 20 number of prior occasions. 21 In that time he was acting in that 22 role as I understand. You can inquire about 23 that. But that's my understanding of the 24 relationship between Kave and Freed at that 25 time.</p>
[Page 43]	[Page 45]

[12] (Pages 42 to 45)

<p>1 Freed 2 Q. Is Mr. Kave an attorney for Rockland 3 Vending? 4 A. He is more of a friend. 5 Q. Does he act as your personal 6 attorney? 7 A. No. I don't believe so. 8 Q. Did you -- 9 A. I'm sorry. 10 Q. Go ahead. 11 A. He did on one occasion. 12 Q. What was that about? 13 A. A television set that we had at home 14 that had a warranty on it. And the warranty 15 company didn't cover it. 16 And so Howard wrote a letter for me, 17 and then they covered it. 18 Q. That's enough. That's fine. 19 MR. SUSSMAN: It is your privilege to 20 assert and not mine. If you wish to disclose 21 the conversation that you had with Mr. Kave, you 22 are allowed to do that. 23 It is not Mr. Kave's decision, nor my 24 decision. Counsel is free to inquire as he has, 25 and you can tell him.</p>	<p>1 Freed 2 correct? 3 A. Yes. 4 Q. What did you say to Mr. Kave, and 5 what did he say to you? 6 A. I explained that a driver had gone 7 into a facility to service and check the 8 machines. 9 He had been held at the facility and 10 they had taken the collection -- all of the 11 money out of the vending machines. 12 I asked him if they can do that. Mr. 13 Kave told me that is grand larceny, extortion. 14 I think he mentioned false 15 imprisonment, but I am not sure this he did or 16 not. 17 He advised me to have our driver go 18 immediately to the State Police and report it. 19 Q. Did you speak to him as to whether 20 the contract at issue allowed DOCS to collect 21 those monies from the driver? 22 A. I did not. 23 Q. Why not? 24 A. I did not. I just didn't. I told 25 him what had occurred on that specific day.</p>
[Page 46]	[Page 48]

<p>1 Freed 2 If you believe that you were 3 consulting with him for legal advice, then my 4 opinion is that you can assert the privilege, 5 and it will have to be decided by a judge if 6 counsel want to argue that point. 7 Q. What did Mr. Kave say to you in with 8 regard to whether the actions were legal or not? 9 A. He said they were illegal. 10 Q. Did he explain why? 11 A. Yes. 12 Q. What did he say? 13 A. Can I hold that? 14 Q. No, not now. Because you have waived 15 the privilege. 16 A. Okay. I -- I called Mr. Kave as soon 17 as I heard about this because I had no idea that 18 someone could do that. 19 Q. When you say as soon as you heard 20 about this, you mean after your call with Mr. 21 Gallagher? 22 A. Correct. 23 Q. Then you spoke to Mr. Kave? 24 A. Yes, correct. 25 Q. This is before you called Mr. Kidder;</p>	<p>1 Freed 2 Q. Did you tell him that the monies DOCS 3 took belonged to Rockland? 4 A. Yes. 5 Q. Based on this conversation with Mr. 6 Kave, you decided that it would not serve any 7 purpose to call the counsel at DOCS? 8 MR. SUSSMAN: At DOCS or the 9 counsel -- you have not established who the 10 counsel is yet. 11 I don't know if he was an AG at DOCS 12 or whatever. 13 MR. SCHULZE: Let me go back then. 14 Q. You testified that Mr. Kidder in his 15 call with you said that counsel had told Ms. 16 Creen to take the action she did; correct? 17 A. That is correct. 18 Q. Who did he say the counsel was? 19 A. I don't recall the name, but he did 20 specify a name. 21 Q. Did he give you contact information 22 for that person? 23 A. Yes. 24 Q. Do you remember the telephone number? 25 A. No, not offhand.</p>
[Page 47]	[Page 49]

1 Freed
 2 Q. Do you have it written down?
 3 A. Yes.
 4 Q. Do you have the name written down?
 5 A. Yes, I do.
 6 Q. Is the counsel an attorney with DOCS?
 7 A. He did not specify that I can recall.
 8 Q. Who did you understand the counsel to
 9 be?
 10 A. The department.
 11 Q. Who did you understand the counsel to
 12 be representing?
 13 A. The Department of Corrections.
 14 Q. And you decided not to call this
 15 counsel because of your conversation with Mr.
 16 Kave; correct?
 17 A. That is correct.
 18 Q. What did you do next?
 19 A. After speaking to Mr. Kidder?
 20 Q. Yes.
 21 A. I believe I checked back to my office
 22 to make sure that Mr. Gallagher was okay.
 23 Q. Was Mr. Gallagher at your office at
 24 that time?
 25 A. I believe he was. I don't recall. I

[Page 50]

1 Freed
 2 I don't know if you call it an order;
 3 a supervisor, yes.
 4 Q. It was more than a suggestion; is
 5 that fair?
 6 A. Yes. I told him to go.
 7 Q. Do you know whether he went to the
 8 State Police?
 9 A. Yes, he did.
 10 Q. Were you present?
 11 A. No.
 12 Q. Do you know what he said to the State
 13 Police?
 14 A. I believe he described what had
 15 occurred.
 16 Q. Why do you believe that?
 17 A. Because that's what he went to the
 18 State Police to do. I also -- that's why he
 19 went to the State Police barracks.
 20 Q. What time did he go to the barracks?
 21 A. I believe it was in the afternoon.
 22 Q. Do you know who he spoke to?
 23 A. I don't know the name of the officer.
 24 Q. Did he tell you the name of the
 25 officer?

[Page 52]

1 Freed
 2 don't recall if they were checking on him or
 3 what, but I believe he was.
 4 Excuse me. No. I am sorry. We
 5 direct Mr. Gallagher to go to the State Police.
 6 I did contact Mr. Gallagher again, and I had
 7 called and directed him to the State Police.
 8 MR. SCHULZE: Let's take a short
 9 break.
 10 (Recess taken at this time.)
 11 Q. When you spoke to Mr. Gallagher, did
 12 he say how long he had been detained?
 13 MR. SUSSMAN: You are talking about
 14 the first time? He already answered that, but
 15 he can answer it again.
 16 MR. SCHULZE: Yes.
 17 A. He said about one hour.
 18 Q. Other than what he told you, do you
 19 have any knowledge?
 20 A. No.
 21 Q. When you told Mr. Gallagher to go to
 22 the State Police, what did he say?
 23 A. He said he was fine. He said okay.
 24 Q. Did you order him to do that?
 25 A. I told him to go to the State Police.

[Page 51]

1 Freed
 2 A. Yes.
 3 Q. When did he tell you the name of the
 4 officer?
 5 A. In a conversation after he left the
 6 State Police barracks.
 7 Q. What were you doing while he was at
 8 the State Police barracks?
 9 A. I was working in Maryland.
 10 Q. Did you talk to the State Police that
 11 day?
 12 A. Yes.
 13 Q. Who did you speak to?
 14 A. The officer -- I don't recall his
 15 name.
 16 Q. You were saying the officer who
 17 did --
 18 A. The officer who did the
 19 investigation, but I don't know his name.
 20 Q. Did you receive a call from that
 21 officer?
 22 A. Yes.
 23 Q. Do you recall what time?
 24 A. Later on in the day.
 25 Q. What did the officer say to you, and

[Page 53]

<p>1 Freed 2 what did you say to him? 3 A. The officer told me that he had 4 gotten a report from Ken, and was going to do an 5 investigation. 6 Q. Ken is Mr. Gallagher? 7 A. That is correct. 8 Q. Did he ask you any questions? 9 A. I don't recall having been asked any 10 questions, no. He might have asked me my 11 relationship to the company. I think that was 12 the only question. 13 Q. Do you know how he got your name? 14 A. The officer? 15 Q. Yes. 16 A. Yes. I called the State Police 17 barracks to see if Ken could go in and file a 18 report. 19 Q. Who did you talk to at the barracks? 20 A. I don't recall. It was a state 21 trooper. 22 Q. Did the trooper tell you to come in 23 and file a report? 24 A. Yes. He said have Ken go up there 25 and file the report. Not myself.</p>	<p>1 Freed 2 A. To best of my recollection, it was 3 that he could not pursue it any further. 4 Q. Did he explain why? 5 A. No. 6 Q. What did you say? 7 A. I told him that I thought a crime had 8 been committed, and I was under the belief that 9 an action should be taken. 10 Q. Did the officer state he did not 11 believe that a crime had been committed? 12 A. No. 13 Q. And he didn't explain why he was not 14 pursuing the investigation further? 15 A. No. 16 Q. You said that you had reached the 17 conclusion that he had spoken to someone at 18 Shawangunk. 19 What did he say in that regard? 20 A. I don't recall. I recall that -- my 21 recollection is that he did speak to someone at 22 Shawangunk. 23 My recollection is that he actually 24 went to the facility and spoke to someone, but I 25 don't recall why I have that recollection.</p>
[Page 54]	[Page 56]

<p>1 Freed 2 Q. Did he explain why? 3 A. No. 4 Q. Have you seen that police report? 5 A. No. 6 Q. After the State Police called you, do 7 you know what they did to investigate? 8 A. I don't know specifically what they 9 did. I don't know what action they took. 10 Q. Do you know generally? 11 A. I think they went up -- I think the 12 officer went up and spoke to someone at 13 Shawangunk. I do recall that. 14 Q. What is the basis for that? 15 A. My recollection? 16 Q. Yes. 17 A. Because I did receive a call from the 18 officer at the conclusion of the investigation. 19 Q. When was that? 20 A. Later that evening. 21 Q. So this investigation was finished on 22 the same day? 23 A. I believe so. 24 Q. What did the officer say when he 25 called you later that evening?</p>	<p>1 Freed 2 Q. It would have been based on him 3 telling you that in the telephone call? 4 A. I would think so, yes. 5 Q. Would you have any other way of 6 knowing that? 7 A. No. 8 Q. Did you see Mr. Gallagher that day? 9 A. No. 10 Q. Did your wife see him? 11 A. Yes. 12 Q. Did you talk to your wife? 13 A. Yes. 14 Q. What did she say about Mr. Gallagher? 15 A. I remember knowing that he was upset. 16 Just that he was upset. 17 Q. What were his duties on this day? 18 A. He was to go out and service several 19 of our accounts, fill machines. 20 Q. What other account besides 21 Shawangunk? 22 A. On that specific date, I don't know, 23 because the route changes from day to day. 24 Q. Did he service other accounts that 25 day?</p>
[Page 55]	[Page 57]

<p>1 Freed</p> <p>2 A. Yes. Prior to Shawangunk.</p> <p>3 Q. What other accounts did he service?</p> <p>4 A. Again, I don't know because his route</p> <p>5 will change from day to day. Monday might be</p> <p>6 different than a Tuesday. And Tuesday may be</p> <p>7 different than a Wednesday. I don't know what</p> <p>8 accounts he serviced that day.</p> <p>9 Q. Is there any written record of the</p> <p>10 routed he had that day?</p> <p>11 A. Yes.</p> <p>12 Q. Who keeps that record?</p> <p>13 A. There was a record at that time. We</p> <p>14 write it out. We have where he should be going.</p> <p>15 When you say keep that record, I am</p> <p>16 not sure that it is kept past that, once he</p> <p>17 completes that day.</p> <p>18 Q. What is the corporate policy</p> <p>19 regarding those?</p> <p>20 A. Once the day is done, you go on to</p> <p>21 the next one --</p> <p>22 MR. SUSSMAN: You are asking if there</p> <p>23 is a regular policy keeping the drivers route</p> <p>24 from the prior days?</p> <p>25 Q. A way you maintain those somewhere.</p>	<p>1 Freed</p> <p>2 Q. What happened to the other accounts</p> <p>3 that he was supposed to service that day?</p> <p>4 A. They would have been serviced. I</p> <p>5 would think they would be service the following</p> <p>6 day.</p> <p>7 Q. Did Mr. Gallagher work the following</p> <p>8 day?</p> <p>9 A. I don't know.</p> <p>10 Q. Who would know?</p> <p>11 A. My wife.</p> <p>12 Q. Other than the people you testified</p> <p>13 about, did you speak to anybody else about the</p> <p>14 events at Shawangunk?</p> <p>15 A. Yes. I believe I did.</p> <p>16 Q. Who?</p> <p>17 A. The Ulster County District Attorney.</p> <p>18 And that might have been May 9 or the morning</p> <p>19 after.</p> <p>20 But my recollection is when I heard</p> <p>21 from the State Police, I contacted the District</p> <p>22 Attorney.</p> <p>23 Q. When you heard from the State Police</p> <p>24 that they were done with the investigation?</p> <p>25 A. Correct.</p>
<p>[Page 58]</p>	<p>[Page 60]</p>

<p>1 Freed</p> <p>2 Is it on a computer, on paper, or in some other</p> <p>3 form?</p> <p>4 MR. SCHULZE: Right.</p> <p>5 A. Yes.</p> <p>6 MR. SUSSMAN: From last May to now,</p> <p>7 does somebody in your company keep them?</p> <p>8 A. I don't know. I don't know.</p> <p>9 Q. Did you ask?</p> <p>10 A. Did I ask where he had been before</p> <p>11 that account?</p> <p>12 Q. No. Did you ask if those records are</p> <p>13 kept?</p> <p>14 A. No. I never asked that.</p> <p>15 Q. Did he go and service any accounts</p> <p>16 after what happened at Shawangunk?</p> <p>17 A. I don't know.</p> <p>18 Q. Did you ask him?</p> <p>19 A. No. Actually -- I am sorry. I did</p> <p>20 not.</p> <p>21 Q. How do you know that?</p> <p>22 A. Because I sent him to the State</p> <p>23 Police.</p> <p>24 Q. Did that take all day?</p> <p>25 A. I think so.</p>	<p>1 Freed</p> <p>2 Q. Who did you speak to at the Ulster</p> <p>3 County DA?</p> <p>4 A. Paul O'Neal. There is only one way I</p> <p>5 would remember that name.</p> <p>6 Q. Are you a Yankees fan?</p> <p>7 A. Yes.</p> <p>8 Q. What did you say to Mr. O'Neal, and</p> <p>9 he to you?</p> <p>10 A. He told me that it was a civil</p> <p>11 matter.</p> <p>12 Q. Did he explain why?</p> <p>13 A. Yes, I -- I think he did. I think he</p> <p>14 spent a bit of time explaining that it was</p> <p>15 something that had to be taken up in civil court</p> <p>16 because we owed them money, and they took the</p> <p>17 money.</p> <p>18 Yes. He indicated it should be in</p> <p>19 civil court.</p> <p>20 Q. Do you recall anything more specific</p> <p>21 than that?</p> <p>22 A. No. Just being dismissed.</p> <p>23 Q. How long did that conversation take?</p> <p>24 A. Probably not more than ten minutes.</p> <p>25 Q. Did you speak to anyone else at DOCS</p>
<p>[Page 59]</p>	<p>[Page 61]</p>

[16] (Pages 58 to 61)

<p>1 Freed 2 on May 9? 3 A. Not after I spoke to Mr. Kidder. 4 Q. Did anyone at Rockland speak to 5 anyone else on May 9? 6 A. I don't believe so. 7 Q. On May 10, did anyone at Rockland 8 receive a call from Roxanne Creen? 9 A. I don't know. 10 Q. Who would know? 11 A. The only other one who would have 12 talked to Ms. Creen would be my wife. 13 Q. Did your wife talk to Roxanne Creen 14 that day? 15 A. I don't know. I don't recall a 16 conversation. I don't recall anything about 17 that. Not to my knowledge. 18 Q. On May 10, did you understand that 19 the contract with Shawangunk was still in 20 effect? 21 A. Yes. 22 Q. When was the next time that the 23 machines were to be serviced after May 9 at 24 Shawangunk? 25 A. Either the next day or the day after.</p>	<p>1 Freed 2 A. Mr. Gallagher. 3 Q. Is this something that Ken said to 4 you? 5 A. Yes. I believe so. 6 Q. When did he say that to you? 7 A. I don't recall. 8 Q. Was it on May 9? 9 A. I don't recall. 10 Q. Did Rockland send anyone to 11 Shawangunk on May 11? 12 A. No. 13 Q. Did you speak to Roxanne Creen on May 14 11? 15 A. No. 16 Q. Did anyone at Rockland speak to 17 Roxanne Creen on May 11? 18 A. I don't know. 19 Q. Who would know? 20 A. Whoever talked to her. I don't know 21 of any conversation that took place. 22 Q. Did Rockland receive a call from 23 anyone at DOCS on May 10? 24 A. I don't recall. 25 Q. Did Rockland receive any written</p>
<p>[Page 62]</p>	<p>[Page 64]</p>

<p>1 Freed 2 I believe it was on an every other day schedule. 3 Q. Did Rockland send anyone to 4 Shawangunk on May 10? 5 A. No. 6 Q. Why not? 7 A. Because we were afraid to. 8 Q. What do you mean? 9 A. One of my employees had just been 10 incarcerated at that facility, and we were not 11 going back. 12 Q. When you say we were not going back, 13 what do you mean? 14 A. I was not sending anybody else to 15 that facility. Ms. Creen -- I considered Ms. 16 Creen to be a danger to my employees. Ms. Creen 17 also stated that she would do it again. 18 Q. When did she state that? 19 A. I believe she told that -- if I 20 remember correctly, she told that either to 21 myself or to Ken. 22 No. She couldn't have told it to me. 23 I don't think I talked to her after that. I 24 believe she told that to Ken. 25 Q. Ken who?</p>	<p>1 Freed 2 communication from anyone at DOCS on May 10? 3 A. Not to my recollection. I don't 4 recall. 5 Q. Did Rockland speak to anyone from 6 DOCS on May 11? 7 A. I don't recall. Not to my knowledge. 8 Q. Did Rockland receive a written 9 communication from anyone at DOCS on May 11? 10 A. I don't recall. 11 Q. Did there come a time when Rockland 12 was notified that DOCS was terminating the 13 contract at Shawangunk? 14 A. Yes. 15 Q. When was that? 16 A. I don't know. I don't recall. 17 Q. How was Rockland notified? 18 A. Again, I don't recall. 19 Q. Who would be able to answer these 20 questions? 21 A. I am not sure. I am not sure. 22 We were notified that the contract 23 was being terminated, but I don't know -- I 24 don't know who it was that received that 25 notification or how it came.</p>
<p>[Page 63]</p>	<p>[Page 65]</p>

[17] (Pages 62 to 65)

<p>1 Freed</p> <p>2 Q. How did you personally learn of it?</p> <p>3 A. I believe it was -- it had to be a</p> <p>4 written communication. At one point a letter</p> <p>5 was put on my desk they were terminating our</p> <p>6 contract.</p> <p>7 Q. But you don't remember when this was?</p> <p>8 A. No. I believe it was the beginning</p> <p>9 of the next week. And the reason that I am</p> <p>10 surmising that is because of the timing of how</p> <p>11 things went down.</p> <p>12 I believe it was the beginning of the</p> <p>13 following week.</p> <p>14 Q. Did the written communication state</p> <p>15 the reason for termination?</p> <p>16 A. I don't recall.</p> <p>17 Q. Did the written communication state</p> <p>18 that monies were owed by Rockland?</p> <p>19 A. I don't know.</p> <p>20 Q. Did the written communication state</p> <p>21 that the vending machines were going to be held</p> <p>22 at Shawangunk?</p> <p>23 A. The vending machines were held by</p> <p>24 Shawangunk. And whether the written</p> <p>25 communication specifically stated that, I don't</p>	<p>1 Freed</p> <p>2 A. Not specifically, no.</p> <p>3 Q. Do you know whether it goes into an</p> <p>4 inmate account?</p> <p>5 A. I have been told that it does.</p> <p>6 Q. Do you know what that account is used</p> <p>7 for?</p> <p>8 A. I have been told that it goes towards</p> <p>9 amenities for the inmates; cable TV and things</p> <p>10 like that.</p> <p>11 Q. Do you know if DOCS makes a profit on</p> <p>12 the vending machine contracts?</p> <p>13 A. I have no knowledge.</p> <p>14 Q. Until they picked up the vending</p> <p>15 machines, is it fair to say that after May 9,</p> <p>16 2007, Rockland never sent another driver to</p> <p>17 Shawangunk?</p> <p>18 A. Correct.</p> <p>19 Q. Do you know who made the decision to</p> <p>20 cancel the contract at Shawangunk?</p> <p>21 A. Department of Corrections. I don't</p> <p>22 know specifically who.</p> <p>23 Q. Do you know why they cancelled it?</p> <p>24 A. Based on the letters, I would assume</p> <p>25 it was either because of late commissions or our</p>
<p>[Page 66]</p>	<p>[Page 68]</p>

<p>1 Freed</p> <p>2 recall because I don't recall the written</p> <p>3 communication.</p> <p>4 Q. Over the term of your contract with</p> <p>5 Shawangunk, how often did a typical vending</p> <p>6 machine need to be replenished?</p> <p>7 A. Either daily, or every other day for</p> <p>8 some of the machines.</p> <p>9 Q. What happens if they are not</p> <p>10 replenished daily or every other day?</p> <p>11 A. They will empty out.</p> <p>12 Q. If they empty out, then there will</p> <p>13 not be any of the vended products for the</p> <p>14 inmates to obtain; is that correct?</p> <p>15 A. That is correct -- actually, that's</p> <p>16 not correct. The families buy the product, but</p> <p>17 the inmates cannot buy products from the</p> <p>18 machine, but they can eat them.</p> <p>19 Q. In the visitors room?</p> <p>20 A. Yes.</p> <p>21 Q. Are there vending machines in the</p> <p>22 officers lounge as well at Shawangunk?</p> <p>23 A. In the employee area, yes.</p> <p>24 Q. Do you know what is done with the</p> <p>25 money that you pay in commissions to DOCS?</p>	<p>1 Freed</p> <p>2 refusal to re-enter the facility.</p> <p>3 Q. How many of your contracts with any</p> <p>4 of DOCS correctional facilities were terminated</p> <p>5 before their expiration date?</p> <p>6 A. I don't know offhand.</p> <p>7 Q. Who would know?</p> <p>8 A. I would, after looking at the record,</p> <p>9 after reviewing.</p> <p>10 Q. When you say record, do you mean</p> <p>11 Rockland's records?</p> <p>12 A. Yes, yes.</p> <p>13 Q. Do Rockland's contracts with the</p> <p>14 correctional facilities have optional renewal</p> <p>15 provisions?</p> <p>16 A. Yes.</p> <p>17 Q. And to exercise the renewal, both</p> <p>18 sides need to agree?</p> <p>19 A. That is correct.</p> <p>20 Q. Either Rockland or DOCS were free to</p> <p>21 walk away from the contract rather than renew</p> <p>22 it; is that correct?</p> <p>23 A. Yes, that is correct.</p> <p>24 Q. Do you know how many of the DOCS</p> <p>25 facilities chose not to exercise a renewal</p>
<p>[Page 67]</p>	<p>[Page 69]</p>

[18] (Pages 66 to 69)

<p>1 Freed 2 option? 3 A. Several. 4 Q. Which ones? 5 A. Eastern, Ulster, Woodburn, Fulton. I 6 believe that those are the ones that did not 7 exercise their option. 8 Q. Did Rockland have a contract with 9 Lincoln Correctional Facility? 10 A. Yes, we did. 11 Q. When did that expire? 12 A. I believe it did not. It was 13 terminated prior. I believe it was terminated 14 prior to the expiration of the contract. 15 Q. What do you base that belief on? 16 A. The fact that they stopped letting us 17 into the facility, and a telephone call telling 18 us to take the machines out. 19 Q. Would it refresh your recollection if 20 I told you that the contract expired in March 21 2007, and Rockland continued providing services 22 after the expiration date? 23 A. That's not my recollection. 24 Q. Okay. 25 A. Without the specific contracts here</p>	<p>1 Freed 2 paying commissions. 3 Q. Other than Fishkill, are there any 4 Rockland vending machines at any DOCS facilities 5 currently? 6 A. Yes. 7 Q. Where? 8 A. Green Correctional Facility. 9 Q. Is that contract still in effect? 10 A. I believe it is. 11 Q. What did you expect DOCS to do when 12 they were informed you that your drivers would 13 no longer enter Shawangunk Correctional 14 Facility? 15 A. At that point my concern was for the 16 safety of my drivers, first and foremost. And I 17 was totally convinced that my drivers were not 18 safe. 19 I would not ask a driver to go some 20 place where he was not safe. 21 Q. Okay. That's your motive. What did 22 you expect DOCS to do? 23 A. After what occurred at Shawangunk, I 24 had no idea of what Shawangunk was capable of 25 doing, or DOCS.</p>
<p>[Page 70]</p>	<p>[Page 72]</p>

<p>1 Freed 2 in front of me, I can only go by what I recall. 3 That's not my recollection. 4 Q. You understand that you are here 5 testifying on behalf of Rockland; is that 6 correct? 7 A. Oh, absolutely. 8 Q. Did Rockland ever claim it didn't owe 9 any commissions because there was no written 10 contract in effect with DOCS? 11 MR. SUSSMAN: With DOCS. 12 A. I don't recall saying that. 13 Q. Do you know whether -- 14 A. I don't recall that. I don't recall 15 that. 16 Q. If one of the contracts reached its 17 expiration date and DOCS asked you to stay, and 18 you continued to provide vending services for 19 another month, would you owe DOCS commissions 20 for that month? 21 A. I don't believe we would. 22 Q. Why not? 23 A. Because in my estimate if a contract 24 is expired and we continued to service that 25 account, I don't believe that we should be</p>	<p>1 Freed 2 We had a situation that had occurred 3 and the person who was the utmost -- had the 4 utmost responsibility totally agreed with it. 5 Q. If your driver did not enter the 6 Shawangunk facility, was there any way that 7 Rockland could continue to perform its contract? 8 MR. SUSSMAN: He did not testify that 9 the drivers would not enter the facility. He 10 directed them not to enter the facility. 11 You can answer. 12 A. I was hoping that there would be some 13 dialogue. I guess, based on what occurred, we 14 couldn't service the account. 15 Q. With respect to your counsel's 16 objection, I will make it clear. 17 You are the one who told the drivers 18 not to go to Shawangunk; is that correct? 19 A. Yes. 20 Q. Could you -- 21 A. Can I go back to correct? 22 Q. Yes. 23 A. Based on the last conversation, there 24 was some conversation from Shawangunk in the 25 days after that because the weekend was coming</p>
<p>[Page 71]</p>	<p>[Page 73]</p>

[19] (Pages 70 to 73)

<p>1 Freed 2 up. 3 And I recall them contacting us to 4 find out if we would be servicing them on that 5 specific weekend. There was some conversations. 6 I was not involved in it.</p> <p>7 Q. What did Rockland tell Shawangunk in 8 that regard?</p> <p>9 A. I don't know what they told them. I 10 can tell you, and it is not personal, but based 11 on what occurred, I would not allow my people to 12 go back in there.</p> <p>13 Q. And you told your people that; 14 correct?</p> <p>15 A. Absolutely.</p> <p>16 Q. Did Rockland have a contract with 17 Coxsackie?</p> <p>18 A. Yes.</p> <p>19 Q. When did that expire?</p> <p>20 A. I don't believe -- and again, without 21 the contracts in front of me -- that did expire.</p> <p>22 Q. Do you think that the contract is 23 still in effect?</p> <p>24 A. I think they cancelled prior to the 25 expiration of the contract.</p>	<p>1 Freed 2 commissions; and some of them more. Some of 3 them four months. 4 When we -- but we had caught up, and 5 then we were terminated, didn't pick up the 6 option.</p> <p>7 Q. When you say terminated, were you 8 including the case where the contract expired 9 and the option to renew was not used?</p> <p>10 A. Some of them occurred that way, where 11 the option was not picked up. And some of them, 12 they terminated or they wouldn't allow our 13 driver's to come into the facility while our 14 contract was in effect.</p> <p>15 MR. SUSSMAN: Can I have a minute 16 outside?</p> <p>17 MR. SCHULZE: If it is an issue of 18 privilege, okay. Don't speak about his 19 testimony, though.</p> <p>20 MR. SUSSMAN: I am not going to talk 21 to him about his testimony. There is no 22 requirement that I talk to him about his 23 testimony during the deposition, counsel.</p> <p>24 (Witness and counsel leave, confer 25 and return to the deposition room.)</p>
[Page 74]	[Page 76]

<p>1 Freed 2 I understand that I am under oath, 3 but that's my recollection. I could be wrong. 4 I'm looking at the contract and the 5 date that will verify. I am here without that 6 information. I believe that Coxsackie is one of 7 the accounts that terminated prior.</p> <p>8 Q. How much were you in arrears to 9 Coxsackie?</p> <p>10 A. I don't recall.</p> <p>11 Q. How many months?</p> <p>12 A. I don't recall.</p> <p>13 Q. Is it fair to say that you were in 14 arrears?</p> <p>15 A. I believe so.</p> <p>16 Q. When --</p> <p>17 A. At the day of the termination, we 18 would have been in arrears on some of these 19 facilities two to three months.</p> <p>20 On some of the facilities on the day 21 we were terminated, we were paid in full.</p> <p>22 Q. What do you mean by terminated?</p> <p>23 A. In other words, on the day that they 24 concluded our service. We had been behind on 25 some of the facilities two to three months on</p>	<p>1 Freed 2 Q. Having conferred with your counsel, 3 is there any testimony that you want to correct?</p> <p>4 A. I just -- I don't think there is 5 anything specific. We have been late on 6 commissions for the last year. That's just the 7 way it is.</p> <p>8 The reason we were terminated, and I 9 might have misunderstood your questions here, is 10 that we went to the State Police because my 11 employee was incarcerated. We were retaliated 12 against, and that's why the contracts were 13 cancelled.</p> <p>14 They were not cancelled because we 15 were late on commissions, because we were always 16 late on commissions.</p> <p>17 Q. Did your attorney tell you to say 18 that?</p> <p>19 MR. SUSSMAN: Objection.</p> <p>20 MR. SCHULZE: It is improper for you 21 to confer about his testimony.</p> <p>22 MR. SUSSMAN: There is no question 23 pending. I am permitted to talk to him about 24 his testimony and about his case.</p> <p>25 MR. SCHULZE: What you talk about</p>
[Page 75]	[Page 77]

[20] (Pages 74 to 77)

<p>1 Freed 2 after the witness is sworn is no longer 3 privileged. 4 MR. SUSSMAN: I disagree. All 5 communications between the client and the 6 attorney are privileged. I disagree. 7 Q. What do you base that statement on? 8 A. I base the statement on the fact 9 that, again, we have been late on commissions 10 for the last year or better, and during that 11 time they renewed our contract. 12 Now we have a situation where they go 13 in, and I think you refer to it legally as self 14 help, and helped themselves to our money and 15 incarcerated our employee. And within two 16 months they pull the contract. 17 I don't think it is a stretch to 18 assume that it was not a question of the 19 commission being late. I misunderstood the 20 questions. 21 I thought you were referring to 22 why -- what their stance was. I knew why the 23 contracts were cancelled. 24 Q. Do you have anything other than the 25 temporal proximity that you base that statement [Page 78]</p>	<p>1 Freed 2 MR. SUSSMAN: Read back the 3 testimony. Don't play that game. He just said 4 that to you. 5 MR. SCHULZE: I am asking him 6 questions and not you. You cannot 7 mischaracterize the testimony, and then ask him 8 for the basis. 9 He told you the basis. He told you. 10 Q. Are you ready to answer the question? 11 A. If my attorney says I can, sure. 12 MR. SCHULZE: He can answer the 13 question. 14 MR. SUSSMAN: Do not mischaracterize 15 the testimony in your question. 16 Q. I am not characterizing your 17 testimony at all. 18 Tell me why, or what is the basis for 19 your knowledge that you were terminated or not 20 renewed in retaliation for your complaint. 21 A. We have had a history of being late 22 on commissions. For the last year or better, 23 our commissions have been late. 24 The letter I got from Kidder was back 25 in November. Since then, between November and [Page 80]</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>1 Freed 2 on? 3 MR. SUSSMAN: Objection to form. 4 THE WITNESS: I'm not sure what that 5 means. 6 MR. SCHULZE: You can say objection 7 to form. 8 A. I don't know what that means. 9 Q. You said you knew that the contracts 10 were not renewed in retaliation for your 11 complaint because it happened around the same 12 time. 13 MR. SUSSMAN: Objection. He did not 14 say that. You are mischaracterizing the 15 testimony. What he said is that the reason 16 given he was late -- 17 MR. SCHULZE: He said -- 18 MR. SUSSMAN: Excuse me. I will not 19 let you mischaracterize or shorten his 20 testimony. That's not going to happen. 21 He did not say that. He said there 22 was history of being late. And that during that 23 history, he said, was that his contracts were 24 extended. 25 MR. SCHULZE: Who is testifying here? [Page 79]</p>	<p>1 Freed 2 whenever this occurred at Shawangunk, they 3 renewed contracts. They renewed in spite of 4 that. 5 Now we have a situation where they 6 broke the law, and they imprisoned an employee. 7 We took the appropriate action. We went to the 8 State Police. 9 And I wanted help, and no one would 10 help me. Finally -- and basically, because I 11 took those actions, they cancelled all our 12 contracts specifically. 13 We have nothing left. As a matter of 14 fact -- 15 Q. Is your contract still in effect at 16 Fishkill? 17 A. Yes, it is. 18 Q. Is your contract still in effect at 19 Green? 20 A. Yes, it is. That means they only 21 cancelled eight out of ten. 22 Q. When you say cancelled, do you mean 23 non-renewed? 24 A. Either that or non-renewed. 25 Cancelled in the middle of the contract, or [Page 81]</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[21] (Pages 78 to 81)

1 Freed
 2 would not let our employees into the facility
 3 even though we had a contract.
 4 Q. You don't know why contracts were
 5 cancelled in the middle; correct?
 6 A. It is simple to figure out. I don't
 7 have that information in front of me and I don't
 8 have it memorized.
 9 Q. And you don't know how many of them?
 10 A. No, not specifically.
 11 Q. Which facilities would not let your
 12 employees in?
 13 A. Lincoln Correctional, and there were
 14 others. But Lincoln Correctional was the one
 15 that stand outs in my mind.
 16 Q. When?
 17 A. Prior to them cancelling our contract
 18 and telling us to get the machines out.
 19 Q. What date?
 20 A. I don't know offhand.
 21 Q. What month?
 22 A. I don't know. It was -- I don't
 23 recall. It was after what occurred at
 24 Shawangunk.
 25 Q. How do you know that?

[Page 82]

1 Freed
 2 contract in effect when she refused to let my
 3 people come in and service the machines. You
 4 know ---
 5 Q. Go ahead.
 6 A. -- having a contract in effect and
 7 not being allowed to go in and service the
 8 machines with the machines still being there, to
 9 me, that ended the contract.
 10 Q. Do you have something that you want
 11 to add?
 12 A. No, that's fine.
 13 Q. Did anyone at DOCS ever state to
 14 Rockland they were terminating or not renewing a
 15 contract because of your complaints?
 16 A. Yes.
 17 Q. Who?
 18 A. Steward at Eastern Correctional
 19 Facility.
 20 Q. Who is that?
 21 A. Her name is Marti. I don't know her
 22 last name.
 23 Q. When was this conversation?
 24 A. Just prior to their not renewing our
 25 extension.

[Page 84]

1 Freed
 2 A. Because I remember her referring to
 3 Shawangunk.
 4 Q. Who?
 5 A. Ms. Mason.
 6 Q. You spoke to Miss Mason?
 7 A. I tried to.
 8 Q. You said that you remembered Ms.
 9 Mason referring to it?
 10 A. Yes.
 11 Q. Who did she refer to it with?
 12 A. To me.
 13 Q. You spoke to Miss Mason?
 14 A. Yes. I spoke to Ms. Mason. I tried
 15 to. And I have an e-mail from her telling me to
 16 stop e-mailing her and stop talking to me. Get
 17 out.
 18 And I tried to talk to her.
 19 Q. Was there a contract in effect at
 20 that time?
 21 A. Yes, yes.
 22 Q. You are referring to Lincoln
 23 Correctional Facility; correct?
 24 A. I am referring to Lincoln
 25 Correctional Facility. I believe there was a

[Page 83]

1 Freed
 2 Q. When was that?
 3 A. During the summer.
 4 Q. What month?
 5 A. I don't know. August. That's a
 6 guess.
 7 Q. Who did she speak to?
 8 A. Me.
 9 Q. Tell me everything you know about
 10 that conversation.
 11 A. She had advised me that our third
 12 year of the contract was over, and she was
 13 sending me the extension to sign, and get
 14 notarized and send back to her.
 15 I did that.
 16 Then I opened up the New York State
 17 Contract Reporter the following month and found
 18 that the facility was being advertised for bid.
 19 I called her. She said: Mike, I did
 20 everything I could. They accused me in Albany
 21 of being your relative. That's how hard I
 22 worked for you. They will not renew any of your
 23 contracts because of what is going on.
 24 She said: Do you know how much work
 25 I have to do to put out another bid? I did

[Page 85]

[22] (Pages 82 to 85)

<p>1 Freed 2 everything I could, and they will not renew your 3 contract. 4 And she said our service was -- our 5 service has always been, to every one of these 6 facilities way over the top, way over what 7 anybody else has done for them. Way over the 8 top. 9 Q. She said because of the situation? 10 A. That's exactly correct. 11 Q. What did she mean by Albany? 12 A. She said specifically Albany. I 13 would imagine that she is talking about somebody 14 way over her pay grade. 15 Q. Do contracts need to be approved by 16 the state controller? 17 A. Yes. I believe so. 18 Q. Do you know whether the state 19 controller expressed any concern about the 20 contract renewal at Eastern? 21 A. I do not. 22 Q. Do you know where the state 23 controller is located? 24 A. I do not. 25 Q. Did Marti mention Stewart Kidder in </p>	<p>1 Freed 2 Creen had made the decision to cancel the 3 contract at Shawangunk? 4 A. No. 5 Q. Had Rockland ever told you that 6 Stewart Kidder made the decision to cancel the 7 contract? 8 A. I believe when -- I can only guess 9 based on the conversation I had with Marti that 10 when she was talking about Albany that Stewart 11 Kidder is the decisions maker in Albany. 12 Q. So you are referring to that one 13 reference to Albany in that conversation; is 14 that correct? 15 A. I am sorry. One more time. 16 Q. When you say this, you are referring 17 to that one reference to Albany -- 18 A. In that specific answer to your 19 question, yes. 20 Q. Was anything else done? 21 A. In reference to? 22 Q. Did anyone ever tell you that Stewart 23 Kidder directed that the contract with 24 Shawangunk be cancelled? 25 A. I think Marti intimated that. </p>
<p>[Page 86]</p> <p>1 Freed 2 this call? 3 A. She did not mention anyone by name. 4 Q. Did anyone ever tell you that the 5 contracts were not being renewed because of 6 instructions from Stewart Kidder? 7 A. No. I don't believe so. 8 Q. Did Rockland bounce any checks to 9 DOCS in 2007? 10 A. Yes. 11 Q. How many? 12 A. I don't know. 13 Q. Were there some correctional 14 facilities where you did not make any commission 15 payments at all in 2007? 16 A. I don't have that knowledge. I don't 17 know. 18 Q. Would you be surprised to find out 19 that there were? 20 A. Yes. 21 Q. Do you know what happens to the 22 inmates' accounts when commissions are not paid 23 on time? 24 A. No. 25 Q. Was Rockland ever told that Roxanne </p>	<p>[Page 88]</p> <p>1 Freed 2 By her reference to Albany? 3 A. Yes. 4 Q. Anything else? 5 A. I can't think of anything. 6 Q. What did Marsha Riley do to retaliate 7 against Rockland? 8 A. After this occurred at Shawangunk, 9 she refused any communication with myself or our 10 company. She insisted that we were behind on 11 our commissions, that we were not behind on. 12 After setting up a meeting that I 13 asked for to discuss our situation at Lincoln, 14 she refused to meet with me once we arrived, and 15 walked out of the building and walked out. 16 Q. What day was that? 17 MR. SUSSMAN: Let him finish the 18 whole answer. Finish your whole answer, please. 19 A. I don't recall the day. 20 Q. Go ahead. 21 A. And she -- and she locked our people 22 out of the building. 23 Q. When you say she refused any 24 communication, what do you mean? 25 A. I have e-mails from Miss Riley saying </p>

[Page 87]

[Page 89]

[23] (Pages 86 to 89)

<p>1 Freed 2 don't ever e-mail her again. 3 Q. Did you e-mail her after that? 4 A. Yes. 5 Q. Did she respond? 6 A. I believe again with an e-mail saying 7 not to e-mail her again. 8 Q. When did this start? 9 A. After the situation at Shawangunk, 10 but specifically I cannot recall. 11 Q. Was Rockland barred from entering 12 into a contract with the New York City school 13 system? 14 A. New York City school system? Not 15 that I am aware of. 16 Q. Was there a New York City agency that 17 Rockland was barred from entering into contracts 18 with? 19 A. I am not aware of any stipulation 20 that we cannot bid on any contracts for any -- I 21 have not gotten anything to the effect in any 22 way that we are barred from entering into 23 contracts with anyone.</p> <p>24 MR. SUSSMAN: Can I have the question 25 read back?</p>	<p>1 Freed 2 bid. They were just -- I don't know what 3 happened to them. 4 It is kind of strange. The ones that 5 were, we did not participate in. 6 Q. That was a corporate decision? 7 A. No, no. Let me go back. 8 I think there were one or two that 9 went out for bid. The other ones were just 10 given to another company. 11 There was no bid. They were just 12 given out. 13 Q. What is the basis for that statement? 14 A. Because I follow the Contract 15 Reporter, and the bids going out and the 16 contracts going out. We get a letter to come 17 take the vending machines. And the next day 18 there is another company putting vending 19 machines in. 20 I have no idea how they got the 21 contract. Other than one or two of the smaller 22 facilities that might have gone out for bid, 23 seven or eight of them did not. They were just 24 given away. 25 Q. Did you bid on any of them?</p>
[Page 90]	[Page 92]

<p>1 Freed 2 (Record read as requested.) 3 MR. SUSSMAN: To be clear, when you 4 say New York City agency, you are talking about 5 a city agency and not an agency located in the 6 city. You are talking about an agency of the 7 City of New York? 8 MR. SCHULZE: Yes, that's what I was 9 talking about. 10 Q. Are there any agencies in the City of 11 New York that you are barred from contracting 12 with? 13 A. I have not received any document or 14 written communication from anyone saying that we 15 are barred from bidding on a contract. 16 Q. After Rockland's contracts is expired 17 or were terminated at the correctional 18 facilities, were they rebid? 19 A. Some were and some were not. 20 Q. Do you know which were? 21 A. Specifically I don't. 22 Q. Did Rockland bid on any of those? 23 A. No. 24 Q. Why not? 25 A. Most of them were not put out for</p>	<p>1 Freed 2 A. As of right now, as of today, we are 3 bidding on one because of a mandatory visit for 4 Fishkill is today. We will be participating in 5 that. 6 I don't know if we are welcome to. 7 My feeling is that we are not welcome to. I 8 have reason to believe that we are not welcome. 9 Q. Why? 10 A. Because when I called the steward at 11 that facility to ask for the bid package, which 12 is a normal everyday telephone call, I was told 13 that she would have to check first to see if we 14 could be included. 15 Q. Who was the steward? 16 A. Suzette Petterossi. 17 MR. SCHULZE: Let's take a short 18 luncheon recess. 19 (Luncheon recess taken at this time.) 20 CONTINUED EXAMINATION 21 BY MR. SCHULZE: 22 Q. When were you notified that the 23 contract at Lincoln would not be renewed? And 24 by you, I mean Rockland. 25 A. We participated in the bid on that,</p>
[Page 91]	[Page 93]

[24] (Pages 90 to 93)

<p>1 Freed 2 so I don't know the time, but we were involved 3 in the rebid. 4 Q. When was the rebid? 5 A. I don't recall. 6 MR. SCHULZE: Mark as Defendant 7 Exhibit E a letter of March 27, 2007 from Marsha 8 Riley to Michael Freed. 9 (Exhibit D-E, Letter, 3/27/07, marked 10 for identification.) 11 Q. I show you what has been marked for 12 identification as Defendant Exhibit E. 13 Do you recognize that document? 14 A. Yes. 15 Q. What is it? 16 A. It is a letter saying that they will 17 not extend our contract. 18 Q. What is the date of this letter? 19 A. It is March 27, 2007. 20 Q. Does that refresh your recollection 21 as to when you were told that Lincoln would not 22 be extending your contract? 23 A. Yes, it does. 24 Q. This was before you ever made a 25 complaint to the State Police?</p>	<p>1 Freed 2 current on the commissions. 3 However, after the situation, the 4 conversations broke off. After the situation at 5 Shawangunk, the conversations broke off, and 6 Miss Riley would not look at the evidence that 7 we had showing that we had received the 8 commissions, but that they had been commissions. 9 Yes. We were late on her 10 commissions. There is no question about it, 11 that we were late on the commissions. She is 12 incorrect that we were that late on commissions. 13 Basically we were in the process of 14 explaining to her what was going on when this 15 incident happened at Shawangunk. 16 Thereafter, there was no more 17 conversations. 18 Q. At the time you received this letter, 19 you had not yet made any complaints to the State 20 Police or to any other government officials 21 about the conduct of DOCS; correct? 22 A. I'm sorry. 23 MR. SUSSMAN: We can stipulate to 24 that if you want. It is obvious, sequentially, 25 it is obvious.</p>
[Page 94]	[Page 96]

<p>1 Freed 2 A. I am sorry? 3 MR. SCHULZE: Read it back. 4 (Record read as requested.) 5 A. This letter was before the complaint 6 to the State Police, yes. 7 Q. And this letter notifies you that 8 Lincoln will not be renewing your contract; 9 correct? 10 A. That is correct. That's what the 11 letter does state. 12 Can I add something? 13 MR. SUSSMAN: No. 14 Q. Go ahead. 15 MR. SUSSMAN: Just answer the 16 questions. 17 Q. You want to add something? 18 A. No. That's fine. 19 Q. What would you like to add? 20 A. That the letter is -- that the letter 21 is incorrect. 22 Q. In what way is the letter incorrect? 23 A. We were current on commissions at 24 this time. But we had some conversations with 25 Miss Riley after this letter that we weren't</p>	<p>1 Freed 2 MR. SCHULZE: Okay. Will you 3 stipulate that the same is true at the time that 4 Mr. Kidder sent his letter November 2006? 5 MR. SUSSMAN: Yes. The protected 6 speech raised in this case is about Shawangunk. 7 That is clear. We are not arguing about that. 8 MR. SCHULZE: Okay. That saves some 9 time. 10 Q. Was Rockland ever placed on the New 11 York City School Construction Authority 12 disqualified list? Was Rockland ever placed on 13 that list? 14 A. Not that I am aware of. I have no 15 documentation to that effect. 16 Q. Did Rockland default on a contract 17 with the New York City Construction Authority? 18 A. We completed the contract, but we 19 were behind on commissions at the conclusion of 20 the contract. 21 Q. Did you ever make up those 22 commissions? 23 A. We did not. 24 Q. Why not? 25 A. I just know that we didn't. I think</p>
[Page 95]	[Page 97]

[25] (Pages 94 to 97)

1 Freed
 2 we had experienced -- we were just -- the
 3 contract was not as profitable as we thought it
 4 would be. And we finished our contract and took
 5 our machines out.

6 And we owed them commissions at the
 7 end of the contract and they -- if they did in
 8 fact do what you say, put us on the blacklist,
 9 then they took the appropriate action for that.
 10 They did not lock up my people.

11 Q. Did you have anything to add?

12 A. No.

13 Q. As we sit here today, are you
 14 delinquent, Rockland, on contracts that have
 15 expired or that have been terminated with DOCS?

16 A. Is Rockland Vending Corporation
 17 delinquent as of right now?

18 Q. Yes. Rockland Vending is in Chapter
 19 11.

20 A. Since the filing -- post-filing we
 21 are up to date. Pre-filing, yes.

22 Q. Meaning you are stating that these
 23 debts have been extinguished in Chapter 11?

24 A. They have been set aside by the
 25 Bankruptcy Court.

[Page 98]

1 Freed
 2 or by some other responsible party.
 3 Was that, to your knowledge,
 4 submitted and approved by the court to deal with
 5 your debts --

6 MR. SCHULZE: Let me save time.

7 Q. For the purposes of this proceeding,
 8 I don't care what happens in the Bankruptcy
 9 Court.

10 At the time you filed for bankruptcy,
 11 did you owe money to DOCS on the contract?

12 A. Yes.

13 Q. Do you know how much?

14 A. No.

15 Q. Do you know on which contracts?

16 A. I assume on all of them because it is
 17 a month-to-month payment. Even if we were up to
 18 date, there is an amount of money that is owed.

19 Q. Do the contracts with DOCS require
 20 Rockland to maintain any documents?

21 A. To maintain any documents?

22 Q. Yes.

23 A. I don't know.

24 Q. Are you -- go ahead.

25 A. Yes. Commission statements given

[Page 100]

1 Freed

2 Q. We don't have to go into
 3 technicalities of language.

4 The Bankruptcy Court has ruled that
 5 you don't owe these debts any longer?

6 A. That is not correct. The way the
 7 Bankruptcy Court works that the debts are
 8 negotiated. And hopefully, we will -- I am not
 9 a lawyer.

10 I think that is a tough -- for me to
 11 define what happens in bankruptcy is, you know,
 12 is something that I can't do.

13 Q. Is the bankruptcy proceeding still
 14 continuing?

15 A. Yes.

16 Q. Has a plan been approved by the
 17 Court?

18 A. Yes. I believe so. I believe we are
 19 in the process of doing that. We are in
 20 approval. We are fine, yes.

21 MR. SUSSMAN: I don't know if he
 22 understands your question.

23 MR. SCHULZE: I know.

24 MR. SUSSMAN: He is asking about a
 25 specific plan that was submitted by the Trustee

[Page 99]

1 Freed

2 monthly along with gross sales.

3 Q. How long do you have to keep those?

4 A. That I don't know.

5 Q. Does Rockland have a document
 6 retention policy?

7 A. No, not specifically.

8 Q. Do you have a general one?

9 A. No.

10 Q. That is a lawyer's trick. Every time
 11 you say not specifically, you will get that
 12 question.

13 A. Okay.

14 Q. Do you keep a file of correspondence
 15 with DOCS?

16 A. No.

17 Q. Does anybody at Rockland keep such a
 18 file?

19 A. No, no.

20 Q. Do you keep e-mails between Rockland
 21 and DOCS?

22 A. Some of them that I think are
 23 relevant, but not as a rule. If he needs
 24 follow-up, I will move it over.

25 Q. Since you instituted this lawsuit,

[Page 101]

[26] (Pages 98 to 101)

<p>1 Freed 2 have you changed your policies in that regard? 3 A. No. 4 Q. Have you instructed your employees 5 not to discard documents during the pendency of 6 this lawsuit? 7 A. No. My employees don't really have 8 documents, I wouldn't think. They are route 9 drivers. 10 Q. Do you have any documents relating to 11 the complaint to the State Police? 12 A. I don't know. I don't know if there 13 was a police file that was given to us. 14 Q. Do you have any document relating to 15 a complaint to the Attorney General's Office? 16 A. No. 17 Q. Do you have any documents regarding 18 any other complaints you made to state officials 19 about the events at Shawangunk? 20 A. No. 21 Q. Have you ever spoken to George 22 Glassanos? 23 A. Who is that? 24 MR. SUSSMAN: He was the lawyer 25 mentioned earlier.</p>	<p>1 Freed 2 A. I don't believe so. 3 Q. Was there anyone else from Rockland 4 at the facility on that date? 5 A. Not that I know of, no. I don't 6 believe so. 7 The only other one would have been a 8 service tech who would have been in there 9 repairing a machine. And to the best of my 10 knowledge, there was no one else there. 11 Q. Did other drivers service Shawangunk, 12 or was Gallagher the only one? 13 A. We would have -- during the term of 14 the contract, there would have been other 15 drivers as drivers do change routes or leave the 16 company and come onto the company. 17 Q. In 2007, would Gallagher have been 18 the only driver who went to Shawangunk? 19 A. I believe there was another driver 20 who left the company and then Gallagher took 21 that route. Whether it was in 2007 or earlier, 22 I am not sure. 23 Q. At any given time there would be one 24 driver assigned to that facility; is that 25 correct?</p>
[Page 102]	[Page 104]

<p>1 Freed 2 A. I am sorry. The lawyer who advised 3 them. 4 Q. I am not going to represent that. 5 A. No, never spoke to him. 6 Q. What are your wife's duties at 7 Rockland? 8 A. Office Manager and Vice President. 9 Q. Would she often be the one to contact 10 the facilities directly? 11 A. That would be both of us. We share 12 that responsibility. 13 Q. Anyone else who would do that as a 14 regular part of their duties? 15 A. On the DOCS facilities? 16 Q. Yes. 17 A. There is one more person who is an 18 operations manager. And he would be the one 19 when he was with us that would have the 20 conversation. 21 Q. What was his name? 22 A. His name was Mike Shay. 23 Q. When Gallagher went to Shawangunk on 24 May 9, was there anyone else with him in the 25 truck?</p>	<p>1 Freed 2 A. Yes. Can I confer with my attorney 3 for a moment? 4 Q. On an issue of privilege? 5 A. Yes. 6 Q. On an issue of privilege, yes. 7 (Witness and counsel leave, confer 8 and return to the deposition room at this time.) 9 Q. Is what you are writing anything to 10 do with this case? 11 MR. SUSSMAN: Don't write anything 12 down right now about anything. 13 Q. Does that have anything to do with 14 this case? 15 MR. SUSSMAN: So that you are clear, 16 Mr. Freed, and you didn't ask this directly, is 17 not sure the date on this letter, Defendant 18 Exhibit E is the date close to when he received 19 the document. You didn't really ask him when he 20 received it. 21 The date is on the document and it 22 speaks for itself. I told him to go back to his 23 documents and he can check the date. And if 24 there is some discrepancy, obviously, we will 25 let you know that there is an inconsistent date</p>
[Page 103]	[Page 105]

<p>1 Freed 2 with respect to the document. 3 It does not comport with his memory 4 as to the events and the sequence of the events. 5 Q. What is your memory of the date? 6 A. It doesn't meet the sequence that I 7 recall. 8 Q. What is the sequence you recall? 9 A. I would rather check it before I say 10 that. 11 Q. You just said that this doesn't meet 12 the sequence you recall. 13 MR. SUSSMAN: I said it. 14 Q. So it does meet your sequence? 15 A. No, it does not. 16 Q. What is your sequence that you can 17 recall? 18 A. My recollection is that this letter 19 was much closer or within the time period of the 20 situation at Shawangunk. 21 Q. What do you mean by much closer? 22 A. I would rather research it. I don't 23 have -- you my recollection is inconsistent with 24 the date on this letter. So I would like to go 25 back and make sure that the date on letter is [Page 106]</p>	<p>1 Freed 2 the entire calendar for 2006 and 2007 at least. 3 You can redact things like personal names and 4 birthdays if you prefer. 5 MR. SUSSMAN: Let me take a look at 6 it. 7 (REQUEST) 8 Q. Anything else? 9 A. That's it. I am going to respond to 10 that. You just said anything else. 11 Miss Riley specifically said to me 12 during this situation: We know what happened at 13 Shawangunk, quote, unquote. We know what 14 happened at Shawangunk. Those were her words. 15 I don't know how she could tell me 16 that if this letter arrived on March 27. I 17 remember that. 18 Q. You are talking about an oral 19 communication? 20 A. That is correct. She said that. 21 Q. Did you receive this letter before or 22 after this communication? 23 A. How could I have received the letter? 24 We would have been out of there -- no, I 25 received -- no. I remember that conversation [Page 108]</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>1 Freed 2 correct. 3 Q. What are you going to do in order to 4 research it? 5 A. I am going to try to find notes that 6 I have in my calendar based on when I received 7 it, or try to go back and see if we have a copy 8 of the letter. 9 Q. Do you have a calendar covering the 10 days at issue? 11 A. I have an accountant's book, yes. 12 Q. You would make entries when you would 13 receive letters such as this? 14 A. If I received a letter and I was 15 going to respond to it, I would have Miss 16 Mason's name and telephone number where I would 17 call her back. 18 MR. SCHULZE: Do you have any 19 objection in providing that? 20 MR. SUSSMAN: No. There may be 21 irrelevant personal parts. I have not seen the 22 book. 23 Let me review it, and if the pages 24 are relevant, I will certainly share it. 25 MR. SCHULZE: I would like to have [Page 107]</p>	<p>1 Freed 2 and it was after Shawangunk. Because she said 3 we know what happened at Shawangunk, quote, 4 unquote. 5 This letter is inconsistent unless -- 6 MR. SCHULZE: Mark as Defendant 7 Exhibit F a one-page letter dated May 4th, 2007 8 from Marsha Riley to Michael Freed. 9 (Exhibit D-F, Letter, 5/4/07, marked 10 for identification.) 11 Q. I hand you what has been marked for 12 identification as Defendant Exhibit F. 13 Do you recognize this letter? 14 A. I don't know that I received this 15 letter. I don't recall receiving this letter. 16 Q. Is it your testimony that you did 17 not? 18 A. No. My testimony is that I don't 19 recall it. 20 Q. Who would know whether Rockland 21 received that letter? 22 A. It was addressed to me, so it would 23 have gotten to me. But I don't recognize it. 24 Q. You don't recall being notified on or 25 about May 4th that your contract with Lincoln [Page 109]</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>1 Freed 2 had been terminated? 3 A. I don't recall this specific letter. 4 I don't recall something like this where there 5 is a definition of termination. I just don't 6 remember it.</p> <p>7 Q. If you had received this letter, what 8 would you have done with it?</p> <p>9 A. If I had received this letter and 10 read it, it probably would have gone into a file 11 for Lincoln Correctional.</p> <p>12 Q. Do you still have that file?</p> <p>13 A. I still have the file, yes.</p> <p>14 Q. If you went to that file, would you 15 be able to determine whether this letter had 16 been received?</p> <p>17 A. I am hoping I can.</p> <p>18 Q. I will ask you to do that, and to 19 give me a copy of the file.</p> <p>20 (REQUEST)</p> <p>21 MR. SUSSMAN: To the extent that 22 counsel has requests, please follow up in 23 writing with all of the requests so that we can 24 respond because I don't know when we will 25 receive the transcript.</p>	<p>1 Freed 2 crime? 3 A. Never. 4 Q. Is this the first time that Rockland 5 has been in bankruptcy? 6 A. Yes. 7 Q. Do you currently expect to resume 8 operations? 9 A. Yes. We never stopped. 10 Q. But you expect to emerge from 11 bankruptcy? 12 A. Yes. 13 Q. Do you plan to bid on any DOCS 14 Correctional Facility contracts other than 15 Fishkill? 16 A. In the immediate future, no, 17 hopefully not. 18 Q. Why not? 19 A. Tremendously bad experience. 20 Q. Could you -- 21 A. Tremendous drain on us financially. 22 Q. Were these losing contracts? 23 A. They wouldn't be, except for the 24 problems we experienced while we were there. 25 But they were.</p>
<p>[Page 110]</p> <p>1 Freed 2 Please send whatever you want on a 3 list, and we will get the materials together. I 4 know you have a request for a calendar at this 5 point and a request for the Lincoln file.</p> <p>6 I don't know if there are any other 7 documents that you asked for today.</p> <p>8 MR. SCHULZE: What I am doing here is 9 not making a document request that goes beyond 10 the 30(b)(6) deposition relating to -- I just 11 wanted you to understand that.</p> <p>12 Q. Since you don't recall Defendant 13 Exhibit F, you can put it aside. I will not ask 14 you any further questions about it right now.</p> <p>15 Are you on any medication today?</p> <p>16 A. Yes.</p> <p>17 Q. What are you taking?</p> <p>18 A. Lipitor.</p> <p>19 Q. Does that affect your cognitive 20 ability in any way?</p> <p>21 A. I don't think so. It affects my 22 cholesterol.</p> <p>23 Q. That's a good thing?</p> <p>24 A. Yes, exactly.</p> <p>25 Q. Have you ever been convicted of a</p>	<p>1 Freed 2 Q. Did you speak to anybody at Rockland 3 in preparation for this deposition? 4 A. No. 5 Q. Have you spoken -- 6 A. My wife. 7 Q. What did you say to your wife? 8 A. I am going to have a tough day today. 9 Q. Anything else? 10 A. No. That's it. 11 Q. You did not go over the events? 12 A. No. Didn't have to. 13 Q. I think I might be done. Give me 14 about three minutes to figure that out. 15 MR. SUSSMAN: I have some questions. 16 MR. SCHULZE: You don't want to 17 proceed? 18 MR. SUSSMAN: I can wait or go ahead. 19 MR. SCHULZE: Go ahead. 20 EXAMINATION BY 21 MR. SUSSMAN: 22 Q. I show you what has been marked for 23 identification as Defendant Exhibit F. It has 24 Paragraph A entitled "Terminations." 25 Read that to yourself, please.</p>

[Page 113]

[29] (Pages 110 to 113)

<p>1 Freed</p> <p>2 A. Sure.</p> <p>3 Q. To your knowledge, was that provision</p> <p>4 common to all of the contracts with the</p> <p>5 correctional facilities?</p> <p>6 A. All of the facilities?</p> <p>7 Q. Yes.</p> <p>8 A. I think it is a standard contract</p> <p>9 language.</p> <p>10 Q. Before the incident involving Mr.</p> <p>11 Gallagher, did you receive a letter like</p> <p>12 Defendant Exhibit F from Shawangunk?</p> <p>13 A. No, not to my knowledge.</p> <p>14 Q. You started telling counsel about</p> <p>15 some occasion when you were going to meet with</p> <p>16 Miss Riley.</p> <p>17 Do you recall that?</p> <p>18 A. Very, very well.</p> <p>19 Q. Where was the meeting to be held?</p> <p>20 A. At Lincoln Correctional.</p> <p>21 Q. Where is Lincoln Correctional?</p> <p>22 A. In the 120s. It faces Central Park</p> <p>23 North in Manhattan.</p> <p>24 Q. Did you go there for the meeting?</p> <p>25 A. Yes.</p>	<p>1 Freed</p> <p>2 at Lincoln?</p> <p>3 A. No.</p> <p>4 Q. What month was that?</p> <p>5 A. I don't recall.</p> <p>6 Q. When was it in relation to the</p> <p>7 Shawangunk incident?</p> <p>8 A. I believe it was after.</p> <p>9 Q. What was the purpose of the meeting,</p> <p>10 your understanding?</p> <p>11 A. The commissions that were paid and</p> <p>12 the checks that were cancelled that is referred</p> <p>13 to in the letters.</p> <p>14 We had cancelled checks on</p> <p>15 commissions that she was still cancelling our</p> <p>16 contract on.</p> <p>17 Q. Who set this meeting up?</p> <p>18 A. Mr. Ed Jones, who is Miss Riley's</p> <p>19 assistant.</p> <p>20 Q. Was he at the meeting?</p> <p>21 A. No.</p> <p>22 Q. Do you --</p> <p>23 A. I did call on the morning of the</p> <p>24 meeting to confirm the meeting. We drove</p> <p>25 down --</p>
[Page 114]	[Page 116]

<p>1 Freed</p> <p>2 Q. Were you with anyone else from your</p> <p>3 company?</p> <p>4 A. Yes.</p> <p>5 Q. Who?</p> <p>6 A. A representative.</p> <p>7 Q. Did you have a meeting?</p> <p>8 A. We had a meeting scheduled.</p> <p>9 Q. Did you have a meeting, was the</p> <p>10 question.</p> <p>11 A. Very short-lived.</p> <p>12 Q. How long did it last?</p> <p>13 A. A minute and a half, two minutes.</p> <p>14 Q. Where was the meeting as it was</p> <p>15 conducted -- it -- as it was conducted, where</p> <p>16 was it conducted?</p> <p>17 A. In Miss Riley's office.</p> <p>18 Q. Did you enter her office for the</p> <p>19 meeting?</p> <p>20 A. Yes.</p> <p>21 Q. What transpired at the meeting?</p> <p>22 A. Ms. Riley says she didn't have time</p> <p>23 for it. She didn't have time for it. And with</p> <p>24 that, she got up and left.</p> <p>25 Q. Did anyone else continue the meeting</p>	<p>1 Freed</p> <p>2 Q. Who did you call?</p> <p>3 A. I called and spoke to Ms. Riley.</p> <p>4 Q. What did she say?</p> <p>5 A. Come on down. I am waiting for you.</p> <p>6 We parked over on Second Avenue and</p> <p>7 took a cab over. It was expensive.</p> <p>8 We waited about a half hour for her</p> <p>9 to meet with us. We went into her office, and</p> <p>10 she said that she spends enough time all week</p> <p>11 long and will not spend any more time.</p> <p>12 She took her pocketbook and left.</p> <p>13 Q. What day of the week was the meeting?</p> <p>14 A. Friday, at ten o'clock in the</p> <p>15 morning.</p> <p>16 Q. What time were you prepared to meet?</p> <p>17 A. It was a 9:00, 9:30 meeting.</p> <p>18 Q. Counsel asked you some questions</p> <p>19 about the contact that you had with Mr. Kidder.</p> <p>20 Let me go back to the exhibits which</p> <p>21 were previously marked for identification here</p> <p>22 today.</p> <p>23 And there were two of them, one dated</p> <p>24 November 9, 2006, which is Defendant Exhibit C.</p> <p>25 MR. SCHULZE: You should refer him to</p>
[Page 115]	[Page 117]

[30] (Pages 114 to 117)

<p>1 Freed 2 the exhibit copy. 3 Q. Exhibit C? 4 A. Yes. 5 Q. And you responded Exhibit D? 6 A. I'm sorry? 7 Q. You responded Exhibit D? 8 A. Yes. 9 Q. After you responded in D, did your 10 company make timely commission payments to all 11 of the facilities or not? 12 A. No. We did not. 13 Q. Did you receive -- Mr. Kidder's 14 letter says in the last sentence in the second 15 paragraph, "All future checks must be paid on 16 time." 17 Do you see that? 18 A. Yes. 19 Q. You are telling us that you did not 20 comply with that? 21 A. No. We did not. 22 Q. What contact after November 9, 2006, 23 and before you called Mr. Kidder in or around 24 May 9 or 10 did you have with Mr. Kidder? 25 A. I don't believe I spoke to Mr. Kidder</p>	<p>1 Freed 2 Riley between November 23 and March 27, to your 3 knowledge? 4 A. I don't recall. 5 Q. Do you recall getting it? 6 A. I don't recall getting a letter. 7 MR. SCHULZE: Objection. 8 Q. You gave testimony here today about 9 another individual you identified only by the 10 first name of Marti. 11 Do you recall that? 12 A. Yes. 13 Q. At what facility did she have 14 responsibility for as a steward? 15 A. Eastern Correctional as a steward. 16 But her contract was for both Eastern and 17 Ulster. 18 Q. When you say her contract, the 19 vending contract she administered was for 20 Eastern and Ulster? 21 A. Yes, for both. 22 Q. At the time, and if you know the 23 answer to the question, that you were having 24 conversations you earlier related with Marti 25 regarding the renewal and her reference to</p>
<p>[Page 118]</p>	<p>[Page 120]</p>

<p>1 Freed 2 again. 3 Q. Did you receive any additional 4 letters from Mr. Kidder? 5 A. No. I did not. 6 Q. In Exhibit E, you will notice and 7 read the first paragraph to yourself, please, in 8 Exhibit E. 9 A. Okay. 10 Q. The third sentence says, "I have 11 spoken with you concerning this matter with 12 respect to failure to pay timely commissions on 13 March 13, 2007. When I responded to the letter 14 received from Mr. Kidder, Director of Support 15 Operations regarding vending machines." 16 Do you have any idea what that is in 17 reference to? 18 A. No, I don't. 19 Q. This letter dated March 27, 2007 also 20 says in the same paragraph, "At the present time 21 your corporation is behind four months," which 22 is underscored in bold. 23 Do you see that? 24 A. Yes. 25 Q. Had you received any letter from Miss</p>	<p>1 Freed 2 getting the renewal. 3 And do you recall all of that 4 testimony? 5 A. Yes. 6 Q. Do you know whether your company was 7 current or behind at Eastern and Ulster? 8 A. I believe we were behind. 9 Q. One other inquiry I want to make 10 because it was not clear to me on the record. 11 Counsel asked you some questions 12 about what happened, and if you rebid or tried 13 to bid again on the facilities where you had 14 been and then were no longer. 15 You said that for larger facility, 16 seven or eight of them, that one got the bid. 17 MR. SCHULZE: Objection. 18 Q. What company are we speaking about? 19 A. Ellenville Vending, I believe. 20 Ellenville Vending. 21 Q. What is the process by which the 22 Department of Corrections traditionally notifies 23 the vending community that there is a contract 24 for bid? 25 A. It advertises in the New York State</p>
<p>[Page 119]</p>	<p>[Page 121]</p>

[31] (Pages 118 to 121)

<p>1 Freed 2 Contract Reporter. 3 Q. How frequently does that come out? 4 A. Every Monday. 5 Q. Do you check that routinely? 6 A. Yes. 7 Q. Do you have any personal knowledge 8 from conversations with anyone about how 9 Ellenville came to these various facilities 10 after your departure? 11 MR. SCHULZE: Objection. 12 A. They just handed it to them. 13 Q. Who just handed it to them? 14 MR. SCHULZE: Objection. 15 A. The Department of Corrections. 16 Q. How do you know that? 17 MR. SCHULZE: Objection? 18 A. It did not go for bid. It was not 19 bid. And the bid at Corrections is based on the 20 lowest pricing gets the bid. 21 When we left Eastern and Ulster, we 22 could not get a price increase, which was the 23 reason for the financial problems. 24 And we were charging about 1.75 or 25 1.80 for a sandwich. And Ellenville came in</p> <p style="text-align: right;">[Page 122]</p>	<p>1 Freed 2 A. In my calendar. 3 MR. SCHULZE: I will send you a 4 letter about that. 5 MR. SUSSMAN: No problem. 6 A. You probably won't understand the 7 chicken scratch, to let you know. 8 Q. If we can't understand what is in 9 there, we may have to ask you some more 10 questions. 11 A. I will be happy to. There is nothing 12 in there that I won't answer. 13 MR. SCHULZE: I have nothing further. 14 MR. SUSSMAN: Thank you. 15 MR. SCHULZE: Thank you. 16 (Time noted 1:35 p.m.)</p> <p style="text-align: right;">[Page 124]</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>1 Freed 2 charging 1.40 or 1.50 for a sandwich because 3 when we -- people went in to get the vending 4 machines, the machines were already set up, and 5 the corrections officers were having a tantrum 6 over it. 7 That's the same situation at Eastern, 8 Ulster, Shawangunk. 9 Q. Okay. Did you have any advance 10 notice from Miss Creen of any plan to take the 11 money directly from your machine and keep those 12 monies? 13 A. Absolutely not. 14 Q. Had that ever happened before, to 15 your knowledge? 16 A. Never. 17 MR. SUSSMAN: Thank you very much. 18 EXAMINATION BY 19 MR. SCHULZE: 20 Q. Regarding that meeting at Lincoln 21 that you just testified about, is it fair to say 22 that you don't recall the date? 23 A. I can get that information very 24 easily. 25 Q. Where is that information?</p> <p style="text-align: right;">[Page 123]</p>	<p>1 J U R A T 2 3 I, MICHAEL FREED, have read the 4 foregoing record of my testimony taken at the time 5 and place noted in the heading hereof, and I do 6 hereby acknowledge it to be a true and correct 7 transcript of same. 8 9 10 11 12 MICHAEL FREED 13 14 15 16 17 Sworn and subscribed before me 18 on the ____ day of ____, 2007 19 20 21 Notary Public 22 23 24 25</p> <p style="text-align: right;">[Page 125]</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[32] (Pages 122 to 125)

1 CERTIFICATION

3 I, MICHAEL CATANIA, a Notary Public of the
4 State of New York do hereby certify that the
5 foregoing witness, MICHAEL FREED, was duly sworn
6 on the date indicated; and that the foregoing is a
7 true and accurate transcription of my stenographic
8 notes.

9 I further certify that I am not employed
10 by nor related to any party to this action.

11
12
13

MICHAEL CATANIA

14
15
16
17
18
19
20
21
22
23
24
25

[Page 126]

1 INDEX

2 WITNESS
Michael Freed

PAGE

Examination by Mr. Schulze

3

4 Examination by Mr. Sussman

113

5 English M. Sch.

120

6

7 EXHIBITS

8 D-A Notice

9 D-B E-mail
10 D.C Letter 11/9/06

17

10 B-C Letter, 11/9/06
11 B-D Letter, 11/13/06

21

REQUESTS

Page-1 line Page-1 line

108-7 110-20

17
18
19
20
21
22
23
24
25

[Page 127]

[33] (Pages 126 to 127)

U.S. LEGAL SUPPORT, INC.